
Wow, was I ever wrong! I found the whole event fascinating, and not just because I’m an author who needs to be aware of such things, but because it opened my eyes to a whole new panoply of issues in a constantly changing legal universe. And I want to share what I learned with you. You may think it doesn’t apply to you, but if you write anything at all, or if you are an artist, you may be wrong—and find yourself on the wrong side of the law.

Let me start with an example provided by Tracey Mayfield, the self-described Queen of Copyright and the Imperial Princess of Intellectual Property and Digital Ambassador to all 23 CSU campuses, and, incidentally, an Associate Dean at CSU Long Beach’s Library: Barbie enchiladas!

Barbie enchiladas, it turns out, were artistic creations of Barbie dolls covered in enchilada sauce and presented in a toaster oven. Mattel, the maker of Barbie, sued the artist for copyright infringement. In the end, though, Mattel lost the suit and wound up contributing half of what the artist made on this project in buying examples for their legal team, and then paid out about a million dollars to cover the artist’s legal costs. The use of this well-recognized doll in an inedible Mexican dish was ruled as fair use because the artist's work transforms the original work, using it in a creative, new way—as a parody.

The Barbie dish is a great example of the difference between fair use and piracy. As Dean Mark

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Stover emphasized in his opening remarks, authors should “use resources to the fullest extent possible permitted by fair use,” and to that end a goal for the workshop was to “leave today with the assurance that what you are doing is within the bounds of fair use.” Piracy, the “illegitimate use of materials” and the other side of the copyright coin can lead to problems—big, costly and time-consuming problems!

But what constitutes fair use? Peter Jaszi, Professor of Law at the American College of Law mentioned four factors used by judges in determining if borrowing of material by authors was ‘fair use’ (i.e., non-infringing vs. infringing). The principal factors included: 1) the purpose and character of the use, including whether such example is of a commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work. The more a secondary work changes the original in how it is used, the smaller the portion of the original work excised, and the lower the commercial value of the secondary work, the more likely the borrowing is to be a ‘fair use’ of the original work. “Two things have been made clear in the last 20 years,” continued Jaszi: 1) the most important thing is the first of the four factors, the purpose of the secondary use....everything else is dependent on that factor. And, 2) in regard to that first factor, some purposes are most likely to be judged as fair use: transformative use of the passage (using it in a different way, such as the Barbie enchiladas, or adding something to it, or giving it an educational exposition) merits a good presumption of fair use.

There’s more to say about fair use, but before we go any farther let’s look at some more of Mayfield’s examples, starting with: The Obama Hope Poster. In this instance, artist Shepard Fairey filed a lawsuit against The Associated Press, with the goal of getting a federal judge to declare him protected from copyright infringement claims. He had used an AP photograph as the basis for a campaign poster of President Obama; his suit was a preemptive strike after the Associated Press said it owned the image. The parties settled out of court with details of the settlement not disclosed. Proving, once again, that the best defense is a good offense! And most likely, saving an immense amount of time and money.

For me, the most humorous—and gratifying—of Mayfield’s examples dealt with a monkey and a camera. For real! It seems a photographer left a camera unattended. A black macaque monkey picked it up and took a ‘selfie’ (see cover). A news agency bought the photo, and used it, after which it was used by others in follow-up articles. The news agency threatened the secondary users with copyright infringement. One of those threatened with a suit did some research and found this in copyright law: “In order to be entitled to copyright registration, a work must be the product of human authorship.” Because the monkey stole the camera and framed and took the photo himself, he argued, the monkey is the creator of the work. The lawsuit was dismissed.

Equally intriguing was Mayfield’s last example: face tattoos. Seriously? You can copyright a face tattoo? Apparently, so. Here’s the situation: Actor Ed Helms’ character woke up after a bender in the movie Hangover 2 with a face tattoo that looked exactly like Mike Tyson’s face tattoo. Tyson’s tattoo artist sued Warner Brothers for copyright infringement of his creation, and asked Warner Bros. to edit out the scenes with the facial tattoo. The suit was filed just before the film’s opening, and Warner settled out of court with the tattoo artist, premiering the film two days later, on schedule, with all scenes intact.

Though the outcome in these last three examples was settlement, all cost time and money, and surely anxiety as well. It’s better to avoid these things, if at all possible. So, let’s get back to fair use.

“Fair Use,” said Jaszi, “is a right, tied to the right of freedom of expression, and will be around for a good long time to come.” Soon, however, he gave a strong warning for authors: “Although fair use is a strong right, a powerful right, it can be given away by neglect, by signing it away.... make sure contracts don’t contain waivers not to exercise the fair use agreements. Organizations can ask you to give away your fair use rights.” In 1976 the concept of fair use was incorporated into the copyright law for the first time. Copyright from the 1990s on has been getting stronger and scarier, according to Jaszi, but “Fair use is a safety
Monkey Business continued from page 2

In 1989, Smith continued, the tech firm CompuServe made home internet connections possible with a commercial e-mail server. The World Wide Web was born in March of that year, when Tim Berners-Lee wrote a proposal on “global hypertext for CERN.” Nothing about copyright has been the same since: Digital, said Smith, “has broken copyright.” The notion of “first sale,” where royalties pertain only to the first sale of a printed work, no longer has the same force....every work may be easily distributed on the internet and entails new copies. A remix culture is nourished, which “frightens creators (writers),” as works may be easily changed on the internet. Rights holders, too, are frightened by instant copying and distribution, as “things are now out there without [these] publishers getting paid.” The last major copyright law was in 1976, and does not address the internet, just photocopies, so now “even the Copyright Office is talking about ‘the Next Great Copyright Act.”

Smith suggests there should be an expanded interpretation of fair use of others’ works...” Courts have been moving in this direction.” This gives authors lots of flexibility in using the quotes, passages, and similar creative works of others, but, still, the concept of fair use is always a bit uncertain.

Much of what was discussed is evolving and open to new legal rulings. When discussing copyright and open access for MOOCs (Massively Open Online Courses), Smith noted these were new opportunities, maybe or maybe not constrained by copyright and traditional publishing. But, he maintained, Open Access material is very important for scholars and may result in lower costs for traditional students. A peculiarity currently is that “if you make your own articles available online, you must use the version you sent to publishers, NOT the published article. You must put your original article in university archives...” You probably own only your first copy, before publication. The advantages of Open Access are that it allows “more eyeballs to look at your work, allows greater impact of your work, and allows ‘unexpected readers’ ” (any who do not regularly read a narrow discipline’s published works).

Just so you know, all photos in this article are non-infringing due to several aspects of fair use: primarily because it is an educational piece about fair use, and so transforms the original work; and secondarily, because no money was generated through its production. Oh, and rest assured, no monkeys were harmed in the writing or publishing of this article.

—jparker

The workshop agenda and slides of all the presenters (which includes source material they suggested for further reading) are available at: http://library.csun.edu/Guides/CADvance. (For those who are, hopefully, now paranoid: It is better that would-be authors read articles suggested by the champions of fair use rather than those pushed by powerful forces who often seek to limit it.)
**ONE National Gay and Lesbian Archive**

The men picked up their purchases, quickly sequestered them in a brown paper bag and hustled home as fast as their legs would carry them. Their hearts pounded in their chests, not so much from exertion as from fear, for if caught, they risked arrest. Their booty? Underground pulp magazines with names like *Bachelor, Mr. Queen, Nights Out Little Hustler* and *Third Sex*. Their crime? Indecency, for the magazines were written for gay men from the 1940's when the mere mention of homosexuality was deemed indecent. Possession of an explicit image virtually invited incarceration.

“By today’s standards such magazines are tame,” said Dr. Joseph Hawkins, director of ONE National Gay and Lesbian Archive at the University of Southern California Libraries speaking at CSUN’s first Sex in the Library symposium. *Bachelor* magazine, for example, might include such features as menus for parties or Noel Coward’s interior design scheme. But, in the early 20th Century, said Hawkins, “confirmed bachelor” was a common sobriquet for the day’s gay man, so the intended audience of that mag was immediately obvious. Many publications were of a similar nature but directed at black or Latino gays. In their day, all these publications were anything but innocuous.

In his presentation, entitled *Collecting history and pimping it out with art: A strategy for archival development*, Hawkins first laid out his marketing strategy for ONE Archive. Archives generally are not a big draw for the general public, so to attract visitors—and not incidentally to liven the interest of visitors to back. Seeing this instrument, said Hawkins, never failed to shock the child whenever his or her response to an image was deemed non-deviant was rewarded by a verbal pat on the back. Seeing this instrument, said Hawkins, never failed to liven the interest of visitors to ONE. “The repulsion on

Hawkins took great pains to tie the historical artwork, objects and documents ensconced on ONE’s shelves to the lives of once-vibrant individuals, many of whom contributed mightily to society. Three of those he mentioned I thought worthy of note: Pat Rocco, Rudi Gernreich and Sidney Bronstein.

Rocco, I learned, was the de facto photographer for the LGBT community in the 1970’s and was the founder of an agitprop theatre group known for gratuitous nudity. He was a major benefactor, as well, for much of the theatrical productions’ earnings went to the Los Angeles United Mission, a provider of housing for homeless gays and lesbians. Moreover, said Hawkins, Rocco “…single-handedly saved the gay and lesbian parade in Los Angeles.”

Gernreich was a 1950’s fashion designer and couture trendsetter who earned his prominent place in the archive for his unique clothing innovations, among them the leotard, monokini, thong and “no-bra” bra (a see-through contraption). In addition, Gernreich, we were told, was a founding member of the Mattachine Society, the first gay and lesbian organization on the west coast.

Several of Bronstein’s amazing drawings and paintings, all of men in military uniforms, now adorn ONE’s walls. Bronstein, a gay man who fetishized uniformed men, we learned, was incarcerated on trumped up charges,

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Queer Studies and the Bullough Collection

A student presentation on Inter racial Gay Pornography? How about Bar Culture in the Queer Community? Or perhaps Sodomy: Politics, Language and the Construction of the Homosexual Identity? Or Queer Children and Literature? As unusual, even provocative, as these topics may seem, each one—along with others of a similar ilk—was the topic of a student presentation at the Oviatt Library’s inaugural symposium entitled Sex in the Library. Each lecture, accompanied by appropriate visual images, was the culmination of extensive research by a student completing the capstone course of the University’s Queer Studies minor.

The Queer Studies minor, an interdisciplinary program, I discovered, was created for the study of the history and experiences of “lesbians, gay men, bisexuals, transgender people, inter-sexed people, queers,” and others who don’t fit the predominant heterosexual stereotype. Students in the program are encouraged to explore how sexuality and gender, whether normative or not, “intersect or collide with national, ethnic, racial, gender, class” and other common modes of identification. To me the name of the minor seemed, well…queer…for when I was growing up the term was a commonly used pejorative for gays and lesbians. More recently, I’ve discovered, LGBTQ groups have embraced the word as an umbrella term for all sexual and gender minorities, and in academia, it seems, queer is the preferred all-encompassing descriptor of non-heterosexual identities.

Throughout the course, said Tom Piernik, the capstone’s instructor, his students read about and discussed traditional ways of thinking about “queer theory,” that galaxy of mismatches among sex, gender and desire, including even cross-dressing, gender ambiguity and gender-corrective surgery. But Piernik’s primary challenge to his students was to conduct an innovative study on a subject of their choice, weave their findings into the existing fabric so as to contribute to the scholarship of the field, and then present what they had learned in a public forum. Consulting books and regurgitating facts others had synthesized wasn’t good enough; Piernik demanded that his students become scholars and glean from here and there tidbits of information that previously had not been connected. And where better to find such information than one of the Oviatt Library’s most extensive archives: the Vern and Bonnie Bullough Collection on Sex and Gender?

The Bullough collection is an exceptionally rich assemblage of sex- and gender-related materials that was left to the University by Vern Bullough, the founding director of CSUN’s Center for Sex Research, and his wife Bonnie. Vern, a medical historian and a pioneer in the scientific study of human sexuality, contraception, population issues and alternative sexual behaviors, left a legacy of authorship of more than a hundred peer-reviewed articles, hundreds more popular papers, in excess of fifty books, and upward of 75 chapters in scholarly volumes. Bonnie, a practicing nurse, collaborated with her husband on many studies and was a co-author on many articles, both professional and popular. But the archive includes much more than the couple’s own academic works; it also houses a treasure-trove of sex-related materials written or produced by others that the Bulloughs had collected over their decades of study and teaching.

Archival collections of historical materials, said Ellen Jarosz, are not just for isolated scholars seeking arcane facts; they are also extremely useful teaching tools. Indeed, one of the things she loves most about her job as Special Collections and Archives librarian, she said, is helping neophyte scholars such as Piernik’s students learn the ropes of archival searches. By their very nature archives are difficult to access, and this is especially true when dealing with a group of individuals and with multiple subjects. Not only are many archival components difficult to categorize, she explained, the entire collection is ensconced in a vault and each item must be accessed one by one upon request. There are no stacks through which to freely wander and browse. Moreover, because most of the collection’s contents are rare, old or in poor condition, they do not circulate; rather each item must be fetched as needed by a trained archivist and handled with extreme care in a special reading room. Photographs, for example, must often be examined with gloved hands. To assure no documents are damaged, each student user must be specially trained in their care before being allowed to use them.

Piernik’s students took to his challenge eagerly, but with no knowledge of what was available, and only a computerized database to work from, merely identifying relevant information proved a major chore. To get the ball rolling, Jarosz allowed the class to peruse a set of items preselected by staff members from the collection. Once acquainted with the sorts of things to be found in the archive, the students were then allowed to request documents they thought likely to be relevant to their study topic. Using this cumbersome but necessary pick-

For more information, please visit: pride.csun.edu/sexinthelibrary
In a quiet room, bombs are exploding, thieves have taken over... Mobs are in the street... prison doors are open... in this quiet room." So begin the lyrics of a musical paean to libraries that Dr. Charles Hatfield artfully used as a trellis on which to entwine his thoughts at the dedication of the Oviatt Library's newest sanctuary: The Robert and Maureen Gohstand Leisure Reading Room.

The volumes that grace the shelves of the newly refurbished reading refuge encompass both fiction—classics galore, but also a wealth of popular novels, poetry, westerns, mysteries, sci-fi and modern who-dun-its—and thought-provoking non-fiction: stimulating works on history, for example, and popular books on the major issues of the day. Certainly, an academic library's central purpose is to assist scholars in their search for data, novel perspectives, and fresh ideas related to some esoteric subject, but non-academic books, noted Hatfield, offer an opportunity for fugitive reading, by which he meant reading "done just for the possibility of an unexpected discovery at the margins of our working lives." Enjoying a good story just for the joy it brings, he said, "...is some of the most important reading we can ever do," for by engaging our minds in fantasy we "let our imaginations fly."

In contrast to the utilitarian furniture with its omnipresent electronic appurtenances in the Library's Learning Commons, the new reading alcove is soft, welcoming, almost posh, its décor reminiscent of a well-appointed private library in an upscale home. The chairs are big and cushy, the kind that invite you to sit, and when you do they cradle you and encourage you to stay. Beige carpeting and beautifully oak-stained wooden bookcases, their shelves arrayed with a grand assortment of books, lend a luxurious feel. And on the walls two large, framed paintings add a touch of softness and elegance. But it is a no-nonsense sign at the room's entrance that most loudly proclaims the room's singularity: No food or drink allowed. It says, an anomaly in an otherwise food- and drink-friendly edifice, and a stark reminder that the Leisure Reading Room is a room apart.

The retrograde distinction from the library's central core is, of course, exactly what the Gohstands had in mind when they proposed the project. Their goal was to create a room that would provide a respite from the pressures of work and encourage "reading for pleasure and general enlightenment." Reading for formal learning is important, said Professor Gohstand, but reading just for the fun of it "...spins off a whole range of personal benefits," among them "an appreciation of the beauty of language and sophistication and deftness in its use...".

Drawing on his own childhood experiences absorbing books at the NYC Public Library, Dr. Harry Hellenbrand, University Provost, emphatically endorsed the new literary retreat's uniqueness. The room, he averred, was intended "...to sanctify the act of reading itself." We don't read, he said, "...just to learn or to be entertained [but also] to become spiritually whole and to connect ourselves to other people...[and as] a way to gain intellectual liberty...."

The Gohstands were both catalysts for the room's creation and a source of some of the funds needed to create it; additional monies were provided from the University's Campus Quality Fee and from the Library itself. An endowment established by the couple supports the room's book collection in perpetuity.

Professor Gohstand first proposed that a room be dedicated to leisure reading in the late 1980's when the Oviatt Library was new, its east and west wings still in the planning stage. The original reading room was established and dedicated in 1991, but in early '94 the Northridge earthquake toppled both the Library's stacks and portions of the edifice itself. As the building was partially razed, rebuilt, and restocked, the reading room lay dormant. But when the wings reopened in 2000 it came to life again, less inviting this time, more austere, its collection less rich than originally dreamed. Yet, the concept of a reading room remained intact, firmly rooted in the Library's plans, awaiting an environment in which it could flower again. Finally, in the 21st Century's second decade, even as a portion of the Library was renovated to accommodate a new educational paradigm wherein electronic gadgetry reigns supreme, fresh funds were found to nourish the Gohstand's long-delayed dream and once more the reading room bloomed, larger this time and more radiant than the bud from which it sprang.

Professor Gohstand's lifelong love affair with books, a passion shared by his wife, blossomed in wartime China in the late 1930's and early '40's when he was a boy. In those bleak years, with little opportunity for other avenues of self-entertainment, he said, books provided a haven in which his imagination could soar and allow him to temporarily escape life's harsh realities. Long before he could decipher the written words himself he knew that books contained innumerable fascinating stories, for each evening his older sister, Helen, transformed the letters that he could not yet decipher into spoken words, creating in his mind tantalizing images that captured his imagination. In so doing, he acknowledged, his sister, "...set an example of reading both prose and poetry as an unquestionable component of a full life."
Queer Art and Culture in Los Angeles, 1945-

James Armenti, a distant relative of Hatfield, wrote in This Quiet Room for the dedication of a library in his hometown; a recording of the song, sung by its author, punctuated Hatfield’s dedication. The Friends of the Oviatt Library supported the dedication ceremony.

ONE’s founders and a
colleagues to create exhibitions, and future joint efforts with
the world and one of the oldest such collections in the U.S. With so much history, science and culture to be discovered among the archives long-forgotten documents and memorabilia, it is little wonder that Hawkins is now attracting more of the outside world to the facility’s treasures. Acting on a whim and with no art background, he pursued and was awarded a Pacific Standard Time grant that allowed him to stage an exhibition entitled Cruising the Archive: Queer Art and Culture in Los Angeles, 1945-1980. Soon after, Hawkins said, “…people began to call from all over the world to inquire about our collections.” ONE, he noted, is now collaborating with Polish, Hungarian, Brazilian and Russian

and-hope-for-the-best method, over several weeks the students managed to pull together an impressive array of data from which to develop their ideas. This flea market approach to research, searching for treasures among a minimally organized mélange of little-known and rarely-seen materials, is at the heart of archival research.

Though a tricky and difficult challenge, Piernik’s students were not intimidated. Each one dived into the process, harvested massive amounts of relevant data and in the end produced a PowerPoint presentation. At the symposium, six of them—Orion Block, Madison Di Napoli, Sarah Garcia, Liam Kukuchek, Michael Rodriguez and Bryan Rodriguez-Saringo—confidently stepped up to the dais and enthusiastically expounded on what they had discovered. All proved to be scholarly presentations, each made understandable by an engaging array of relevant images. And when the last of the novice presenters wrapped up his talk and the students’ mentor took the mike, it was immediately obvious to all that Piernik was pleased as punch with his pupils’ accomplishments!

—jdoe

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*Denotes First Time Award Recipient

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