Ask the Lawyer!

For the Capital District Library Council

Presented by Stephanie A. Adams, Esq.

service attorney
What is “Ask the Lawyer?”

“Ask the Lawyer” is a resource-sharing effort to give libraries, museums and archives access to timely guidance and advice about legal issues impacting mission and operations.
How does that work?

“Ask the Lawyer” accepts legal questions jointly submitted by CDLC and a member, through the CDLC website.

If the member or counsel requests a confidential answer, confidential legal advice is sent back to the joint clients.

If the question is suited to it and the member and Council consent to a published answer, shared guidance—not legal advice—is prepared and published on the CDLC website.
What topics does the service address?

- Ethics
- Copyright
- Trademark
- Not-for-profit law
- Information Access
- CPLR 4509
- Contracts
- Format transfer
- Preservation
- Library policies
- Computer/Internet
- Maker space issues
- Education law topics
- Donation issues
- Board questions
What topics doesn’t the service address?

- Current lawsuits
- Employee disciplinary matters
- Issues so specific and intricate, it would take many hours to generate one highly customized answer
- Issues where your Council may have a conflict
Nice gig! How did you get into this line of work?
My law office in Buffalo

2018
“How common (or not) it is for teachers to actually get into legal trouble over copyright issues, and when they do, what the specific issues/infractions have been. (how can I explain why it’s important to my teachers, staff, public.)”
"The one I get a lot here has to do with converting print to .pdf and posting on a class website (password protected, if that makes a difference). Is it within copyright law to convert print to pdf for educational purposes? If so, what are the guidelines (how much is too much)?"
Maine a district school-room

$\frac{2}{3} \times \frac{15}{15} = \frac{4}{3}$
“If we copy and bind short stories we choose, to use for classroom texts, is that under the acceptable use policy?”

“Can a teacher copy and distribute to his class two essays from a book? Is that allowable under fair use? “

“Can a teacher make a copy of a chapter of a book to use in class?”

“Can a school librarian request an article for a teacher to use in class? The teacher plans to make copies for every student and will use it again next year.”
“If I personally own a copy of March of the Penguins, can I show the movie to a group that comes into the library?”
“Pixabay has free images online. Can students use these to create their own story books? The books would then be printed as hard copies.”
Using Images and Videos

Images and Videos on Pixabay are released under Creative Commons CC0. To the extent possible under law, uploaders of Pixabay have waived their copyright and related or neighboring rights to these Images and Videos. You are free to adapt and use them for commercial purposes without attributing the original author or source. Although not required, a link back to Pixabay is appreciated.
“We have a collection of oral histories that we would eventually like to digitize and make accessible online. The problem is that we do not have any sort of permission or rights forms to go along with them. The dates range from the 1950s through the 1980s. What sort of problems could we run into if we decide to make them accessible?”
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Defining your scope
What is this thing? 
...and what do I want to do with it?
Questions a lawyer will ask you...

- What medium?
- What is the title?
- Who is the author?
- How did the library acquire it?
- Do you have the documents showing the acquisition?
- Do you have the provenance?
- Do you own the copyright?
- Is the copyright registered?
- Whose images/voices are fixed in it?
- Is there health information on it?
- Is the content potentially defamatory?
- What is the condition of the physical copy?
- Is this part of a larger collection?
- Do you want to make it available online?
- Does it have unusual financial value?
- Are other copies commercially available?
- What is the potential benefit of public access?
- Will people want to steal it?
Confirming physical ownership

[Image of historical document]

[Document text is not legible in this format]
Establishing copyright ownership

Copyright.gov

Pre-1978 Records
Copyright registrations and renewals covering the period 1970 through 1977 are accessible through a physical card catalog housed in the Copyright Office and also through a virtual set of volumes titled the "Catalog of Copyright Entries" (CCEs).

Post-1978 Records
The Copyright Office is an office of public record for copyright registrations and related documentation. Copyright registrations for all works dating from January 1, 1978, to the present, as well as renewals and recorded documents, are available for search.

Digitization Project
The Copyright Office is an office of public record for copyright registrations and related documentation. Prior to 1978, copyright records were created in analog form and housed in the Copyright Office. Once the "Digitization and
Determine if you need an image release

New York Civil Rights Law

§ 50. Right of privacy. A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.
New York Civil Rights Law

§ 51. Action for injunction and for damages. Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages. ...
Contractual restrictions

- Owner v. Agent authority
- Derivative works
- Royalties
- Reversion clauses
- Donor restrictions
Estate restrictions
Trademark restrictions

Getting Started with Trademarks
Before you apply for a trademark, you should familiarize yourself with the basics. Determine if you need a trademark or another form of intellectual Property protection.

Trademark Tools & Links
- Search trademark database (TESS)
  - Search database for trademark registrations and applications by mark, owner, or serial registration number with Trademark Electronic Search System (TESS)
- Apply online (TEAS)
  - File forms for the trademark application, maintenance and other trademark processes with Trademark Electronic Application System (TEAS)
- Check Status & View Documents (TSDR)
  - Check the status of an application and view and download application and registration records using Trademark Status and Document Retrieval (TSDR)
- Trademark Trial and Appeal Board (TTAB)
  - The TTAB is an administrative board that hears and decides adversary proceedings between two parties, namely, oppositions and cancellations. The TTAB also handles interference and concurrent use proceedings, as well as appeals of final decisions issued.
§ 92. Definitions. (1) Agency. The term "agency" means any state board, bureau, committee, commission, council, department, public authority, public benefit corporation, division, office or any other governmental entity performing a governmental or proprietary function for the state of New York, except the judiciary or the state legislature or any unit of local government and shall not include offices of district attorneys. (2) Committee. The term "committee" means the committee on open government as constituted pursuant to subdivision one of section eighty-nine of this chapter. (3) Data subject. The term "data subject" means any natural person about whom personal information has been collected by an agency. (4) Disclose. The term "disclose" means to reveal, release, transfer, disseminate or otherwise communicate personal information or records orally, in writing or by electronic or any other means other than to the data subject. (5) Governmental unit. The term "governmental unit" means any governmental entity performing a governmental or proprietary function for the federal government or for any state or any municipality thereof.
Thank you!