



LEGAL ISSUES



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Legally Speaking — Blackbeard Case Challenges States' Rights on Infringement

by **Anthony Paganelli** (Western Kentucky University) <Anthony.Paganelli@wku.edu>

Can the state be sued for copyright infringement? This is the issue that was presented to the U.S. District Court for the Eastern District of North Carolina Western Division in 2015 where photographer and videographer **Frederick Allen** claimed the State of North Carolina infringed on his copyrighted works made during the discovery and documentary of the shipwreck *Queen Anne's Revenge*, which was the ship of the infamous pirate **Blackbeard** that wrecked on June 10, 1718 off the coast of Beaufort Inlet, North Carolina. **Allen** was the proprietor of the production company **Nautilus Productions** that maintained exclusive rights to film the project, which began in 1998 after the salvage and research company, **Intersal, Inc.** discovered the wreckage in 1996 (Copyright Alliance, 2019).

An agreement between **Intersal, Inc.** and the State of North Carolina was reached where the state claimed ownership of the property, but **Intersal, Inc.** would keep the rights and monies received from the documentary video and photographs (Ho, 2019). **Intersal, Inc.** and **Nautilus Productions** agreed to document the project through video and photographs. According to **Ho** (2019), the agreement allowed North Carolina to “publish accounts and other research documents relating to the artifacts, site area, and project operations for non-commercial educational or historical purposes.” **Allen** also obtained federal copyright for the videos and photographs used to document the salvage.

However, **Allen** claimed the State of North Carolina posted a significant amount of material on the Cultural Affairs Department website. In 2013, **Allen** and the state settled on a \$15,000 settlement from North Carolina to **Allen** and the state agreed to place a time stamp and water-

mark on copyrighted materials posted on the website. Despite this settlement, **Allen** later alleged that the state continued to use too much copyrighted materials, which he filed a suit against the state for \$8 million for using several hours of videos and over 2,000 photos.

Due to the allegations, the State of North Carolina passed a law “to clarify that photographs and video recordings of derelict vessels or shipwrecks are public records when in the custody of North Carolina agencies; and to provide that certain merchandise credits are not deemed abandoned property.” The law was approved on August 18, 2015 that further stated, “All photographs, video recordings, or other documentary materials of a derelict vessel or shipwreck or its contents, relics, artifacts, or historic materials in the custody of any agency of North Carolina government or its subdivisions shall be a public record pursuant to G.S. 132-1. There shall be no limitation of the use of or no requirement to alter any such photograph, video recordings, or other documentary material, and any such provision in any agreement, permit, or license shall be void and unenforceable as a matter of public policy” (NC Legislature, 2015). The legislation has been called “Blackbeard’s Law.”

U.S. District Judge **Terrence W. Boyle** allowed **Allen** to continue his case against the state because “Blackbeard’s Law” was invalid; therefore, the state had violated federal copyright laws. Due to the suit, the State of North Carolina submitted a motion to dismiss based on the grounds of sovereign immunity, which the motion was denied in the U.S. District Court for the Eastern District of North Carolina. However, the U.S. Court of Appeals for the 4th Circuit reversed the motion and stated that the state was immune from the suit filed by **Allen** (Wasserman, 2019).

Sovereign Immunity

The State of North Carolina referred to the Eleventh Amendment of the U.S. Constitution, which stated, “The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens or another state, or by citizens or subjects of any foreign state.” The amendment has been interpreted by the U.S. Supreme Court to provide immunity to states and their agencies from a lawsuit for remedy by any court, for violating federal laws, which in this case **Allen** has sued the state for violating the U.S. Copyright Law (Wasserman, 2019).

Despite this immunity support from the U.S. Constitution and the U.S. Supreme Court, Congress does have the power to change this by abrogating immunity. **Allen’s** argument is the Section 5 of the Fourteenth Amendment that allows Congress exclusive power to enforce all copyright laws no matter immunity. According to **Wasserman**, “Copyrights cannot be ‘secure’ or ‘exclusive’ if Congress cannot reach and regulate all potential infringers, including states, and if states cannot be held liable for their infringement.” Based on this argument, the *Copyright Remedy Clarification Act of 1990* is an issue that will be interpreted by the U.S. Supreme Court when the arguments are heard.

The *Copyright Remedy Clarification Act of 1990* states, “Amends Federal copyright law to provide that any State, State instrumentality, or officer or employee of the State or State instrumentality is liable to the same extent as any nongovernmental entity for: (1) copyright infringement... Denies sovereign immunity to any State for such violations and provides the same remedies as are available against other private or public entities, including

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attorney's fees" (H.R. 3045, 1990). The liability can be financial remedies of up to \$150,000 for each infringement case. Since this act, a legislative record demonstrated a substantial amount of copyright infringement issues by states, which **Allen** has stated as a reason that the *Copyright Remedy Clarification Act* pertains to their case against the state.

The argument for the State of North Carolina stated, "Congress can abrogate state sovereign immunity only when a constitutional provision allows abrogation through express words or unsurmountable implication. Neither appears in the text or history of the copyright clause" (Wasserman, 2019). The state contended that copyright infringement conduct by states are not the same as being unconstitutional. In other words, the law can determine whether the infringement was intentional and there was no other remedies for the copyright holder in order to abrogate immunity. **Wasserman** added, "Congress failed to carefully tailor its remedies to target actual constitutional violations by States."

The arguments were presented to the U.S. Supreme Court on November 5, 2019. Until the Supreme Court rules on whether states can be sued, the copyright case is being monitored, because the decision could impact numerous states and state agencies. A state agency would include state funded academic and public libraries.

Library's Concerns

The library has an interest in this copyright infringement case, because most libraries and archives are funded and operated through government agencies. These libraries impacted by this case are academic libraries and archives, as well as museums. The reason for concerns from these state funded and operated libraries and archives is the protection of sovereign immunity. According to the brief filed by the **American Library Association, Association of College and Research Libraries, Association of Research Libraries, Society of American Archivists**, and software preservation network on September 27, 2019, the elimination of sovereign immunity would impact libraries that rely



on sovereign immunity in regards to the fair use activities and the preservation of large collections of copyrighted resources and materials.

A reason that the elimination of sovereign immunity would impact libraries is the protection libraries, archives, and museums currently have against any damages liabilities due to copyright infringement, which they have noted in the brief that they do not abuse the copyright laws. However, the organizations understand the financial devastation of damage liabilities that can be involved should copyright holders have the ability to file suit against a state-run library, archive, or museum. The issue of infringement suit is the stipulation that the copyright holder could seek remedies of up to \$150,000 per copyrighted item 17 U.S.C. § 504(c)(2), which libraries and archives have spent approximately \$30 billion on copyrighted material that copyright holders could seek remedies if they deem the institutions are in violation of copyright infringement. If found liable, some libraries and archives with large collections could face millions in remedies.

The concern is that state funded libraries and archives utilized the *Copyright Act's* fair use right under 17 U.S.C. § 107, which libraries use in the effort to digitally preserve the works within their respective collections. The urgency of digitally preserving copyrighted works are due to the constant threat of natural disasters and the wear of items over time. In addition, 17 U.S.C. § 108 specifies the limitations for preserving works in regards to photocopying, but not the details of digital preservation.

Libraries argue that the removal of sovereign immunity will prevent libraries from preserving cultural works, which could be lost due to natural disasters, time, or other issues. Furthermore, libraries have been respectful of copyright laws and educate faculty, students, and patrons, and would continue to obey to copyright regulations through their efforts to preserve important cultural works.

The Main Fact

The copyright infringement case has been inspirational for numerous journalist to utilize their creative ideas for innovative ways to implement pirate stereotypical headlines and puns into their works. However, most have excluded the most interesting fact of the copyright in-

fringement case, which involves the name of **Blackbeard's** ship the *Queen Anne's Revenge*. **Queen Anne** was the reigning monarch in Great Britain from 1707-1717. During her reign, the British Parliament approved the "Queen Anne Statute" that is...wait for it...wait for it...the world's first copyright act!

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Amazon Audible Settles With Publishers

by **Bill Hannay** (Partner, Schiff Hardin LLP, Chicago, IL) <whannay@schiffhardin.com>

Last summer, **Amazon's** audiobooks subsidiary **Audible** announced that it was introducing a new feature: computer-generated text that replicates the spoken words of an audiobook. The new feature was called "Captions." Shortly thereafter, seven major publishers announced their own new feature called "lawsuit."

At the end of August, the publishers filed suit in federal court in New York City, asking the court to enjoin **Amazon's** subsidiary from releasing **Audible Captions** which was scheduled for release in September. *Chronicle Books, LLC et al. v. Audible, Inc.*, No. 19 Civ. 7913 (S.D.N.Y.). The publishers alleged that:

Audible Captions takes Publishers' proprietary audiobooks, converts the narration into unauthorized text, and distributes the entire text of these "new" digital books to **Audible's** customers. **Audible's** actions — taking copyrighted works and repurposing them for its own benefit without permission — are the kind of quintessential infringement that the *Copyright Act* directly forbids.

Audible allegedly seeks "to cut Publishers out from a business model that already exists, by unlawfully creating derivative works ... and publicly displaying unauthorized copies of the Works." Moreover, **Audible Captions** allegedly "does not maintain the quality control that readers have come to expect from Publishers and authors," citing **Audible's** admission that "up to 6% of the Distributed Text may contain transcription errors."

In September, **Audible** filed a motion to dismiss the complaint on the grounds that it was a "contract" dispute and not a copyright case. Alternatively, **Audible** argued that there was no copyright violation

because its conduct was protected as "fair use." The publishers opposed the motion, and the court expressed some doubts about **Audible's** motion during oral argument. Before the court reached a decision on the motion to dismiss, **Audible** made a tentative settlement proposal and asked the court to put a hold on further proceedings while the parties talked. In December, **Audible** asked the court to continue to stay proceedings pending the negotiations.

In mid-January of 2020, the parties advised the court that they had in fact reached a settlement. They tendered a proposed permanent injunction by consent which **Audible** and the publishers had signed. Accordingly, the court signed the injunction and ordered the case dismissed on January 14th.

Although the court-approved injunction is filed under seal, the proposed injunction is available and in pertinent part states as follows:

Audible, and its officers, agents, servants, employees, and attorneys, and other persons and entities who are in active concert or participation with **Audible**, are permanently restrained, enjoined, and prohibited from creating, generating, reproducing, modifying, distributing, publishing, or displaying, without express authorization from the owners or exclusive licensees of the United States digital text rights, written text derived from the audiobook versions of Publishers' Works for any product or service created or offered by **Audible**. This prohibition does not apply to any text in the public domain.

In addition, **Audible** is further enjoined from "(a) inducing or (b) knowingly and materially contributing to, any actor other than **Audible**" in the

display of written text derived from the audiobook versions of Publishers' Works, unless such actions are expressly authorized by the owners or exclusive licensees. Again, this prohibition does not apply to any text in the public domain.

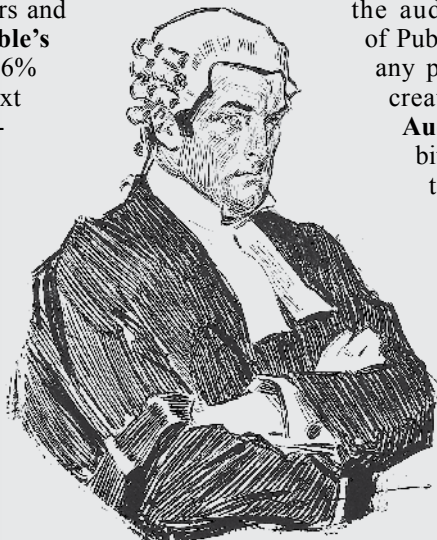
On February 8th, the **Association of American Publishers** issued an announcement confirming the settlement and injunction, stating:

AAP, the plaintiffs, and **Audible** have resolved their pending litigation. **Audible** has agreed that it will obtain permission from any **AAP** members that are in good standing with **AAP** before moving forward with **Audible Captions** for their works.

Subsequently, **Audible** confirmed that it was extending the same commitment to all publishers and authors. The Digital Reader blog announced on February 9th that it has "confirmation from **Audible** PR that all rightsholders with audiobooks in **Audible's** catalog will have the same option as **AAP** members, and they will be able to disable or enable **Audible Captions** on their audiobooks" (<https://the-digital-reader.com/2020/02/09/amazon-is-extending-the-audible-caption-settlement-to-all-publishers-and-authors-will-you-disable-this-feature/>).

It will be interesting to see how many publishers or authors choose to grant permission to **Audible** allowing the **Captions** feature for their works. And even more interesting to see whether and what **Audible** chooses to pay as compensation for such permission. 🍷

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Cases of Note — Copyright & Changing Technology

Column Editor: **Bruce Strauch** (The Citadel, Emeritus) <bruce.strauch@gmail.com>

Justin Goldman v. Breitbart News, Heavy Inc., Time, Inc. Yahoo, Inc. Vox Media Inc., Gannett Company, Inc. and about everyone else you could think of. United States District Court. Southern District of New York. 17-cv-3144 (KBF), Feb. 15, 2018.

Justin Goldman snapped a photo of **Tom Brady** and friends (not Gisele) on the street in the Hamptons and uploaded it to Snapchat Story. It went viral, which is to say every whichaway including Twitter.

The defendants are all news outlets and blogs that “embedded” the photo in articles.

There is no dispute that **Goldman** owns copyright.

So what is embedding?

Defendants did not copy or save the photo on their computers. An HTML code instructs on arrangement of a webpage allowing for placement of images including photos. The code can embed an image retrieved from a third party server. Text and images are seamlessly integrated even though images may be hosted elsewhere.

Facebook, Twitter, YouTube — indeed all social media sites provide the code that permit this lifting and embedding of images.

Summary Judgment

There was no dispute as to the facts, so this was ripe to be decided by a judge as a matter of law. And to do that, we go to the *Copyright Act of 1976* to see how it responds to changes in technology.

Here we find the *Act* gives the owner the exclusive right to “display” the work publicly “either directly or by means of a film, slide, television image, or any other device or process.” 17 U.S.C. § 101.

“Device or process” is defined as “one now known or later developed.” *Id.*

So, yes, you could stop reading right here. But the law is famous for its overkill. So indulge.

The drafters of the 1976 Amendments in their House Report stated much of the impetus for change was driven by new industries and new methods of reproduction. Congress did “not intend to freeze the scope of copyrightable subject matter at the present stage of communications technology.” H.R. Rep. 94-1476, 47, 51 (1976).

Congress intended the display right to include “[e]ach and every method by which the images... comprising a... display are picked up and conveyed.” *Id.*

It went on to jabber about electronic transmission using a “cathode ray tube or similar viewing apparatus connected with any sort of information and retrieval system.” *Id.*

And in that ancient year of 1976 they marvelled at a future world where libraries would one day access single copies of works by electronic transmission.

A (not so) Recent Case

In 2014, the Supreme Court looked at novel technologies in *American Broad-*

casting Cos., Inc. v. Aereo, Inc., 134 S. Ct. 2498 (2014). **Aereo** sold subscribers a technologically complex service that enabled them to watch TV programs over the Internet near the same time as they were broadcast over the air.

Aereo didn’t copy or store anything. When a show was selected, **Aereo’s** servers selected an antenna, tuned to the on-the-air broadcast, and transmitted it to the viewer.

Aereo argued that the viewers chose the program, and the technology provided their choice. The user was “transmitting” the performance.

The user was making the infringing copy.

The Court said, no, it was the same as cable technology which the *Act* addressed. Things lurking behind the screen invisible to the viewer created a “copy shop that provides its patrons with a library card.” *Id.* At 2507.

Although on that basis, the dissent (Scalia, J.) says it’s the buyer doing it, not the copier machine manufacturer.

Which raises vital questions.

Isn’t “copy shop” paired with “library card” a mixed metaphor?

Is this just a finesse to let the copyright owner get at one big defendant rather than having to sue a legion of home viewers?

Shouldn’t you have stopped reading where I told you up above? 🐼



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technology can compare to the feeling of a good book in your hands. ... While public and university libraries are often vast and full of splendor, home libraries are more intimate (but not any less gorgeous).” https://www.architecturaldigest.com/gallery/home-libraries-slideshow?utm_source=nl&utm_brand=ad&utm_mailing=ARD_Daily_AM_030720&utm_campaign=aud-dev&utm_medium=e-

mail&bxid=5cec2586fc942d3ada0d5413&cndid=30022290&esrc=AUTO_PRINT&utm_term=ARD_Daily

Remember when we used to have **tours of personal libraries** in Charleston back in the early **Charleston Conference** days? **Harlan Greene** (now head of special collections at the **College of Charleston Adlestone Library**) and **Gene Waddell** (who used to write for **ATG** but is now retired, writing books, and traveling the continents) were the initial drivers.

Speaking of libraries! A recent Gallup poll surveying Americans about common cultural activities showed libraries are the most popular attractions — yet another data point demonstrating the importance of libraries, writes Biblioracle columnist **John Warner**. (**Anthony Souffle** / *Chicago Tribune*) Quick quiz: Which of the following is the most common cultural activity in the United States? Going to the movies; Attending a concert; Attending a sporting event; Going to the

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Questions & Answers — Copyright Column

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Column Editor's Note: *I wanted to write briefly to introduce myself and recognize what a shining light Lolly has been for me and for everyone who reads this column. Lolly was an incredible mentor and friend to me in law school and has continued to be an inspiration as I have worked at NC State and with groups from ARL to SPARC to make copyright issues clear and to express how the system is designed to support creativity, scholarship, and teaching. I'm so excited to continue following Lolly's example by untangling knots and highlighting significant developments in copyright in this column. I hope you'll feel free to share your own questions at the email address listed here and say hi next time you see me at a conference or workshop. — WC*

QUESTION: *A librarian asks about using commercial services like Office Depot or FedEx Office to make copies of NC-licensed works for use in education.*

ANSWER: Applying Creative Commons (CC) licenses has become the standard method for making scholarship, teaching, and cultural materials more open and impactful. These licenses serve as the backbone for much of the open access and open education movements but some users have felt uncertain about how to interpret aspects of the licenses. The question about how and by whom NonCommercial (NC) licenses can be used is one of the big ones.

CC licenses are designed to allow creators to communicate which rights they reserve and which rights they waive for the benefit of recipients or other creators. They do this by offering a variety of flavors of license that address things like attribution, remixing, and downstream use. The licenses at issue here are those that include the NonCommercial (NC) provision, which restricts the use of NC-licensed materials unless they are “not primarily intended for or directed towards commercial advantage or monetary compensation.” You can read more about the NC-license itself, including the full text here: <https://creativecommons.org/licenses/by-nc/4.0/>.

If NC-licensed materials can only be used for activities that are “not primarily intended for or directed towards commer-

cial advantage or monetary compensation” then a public school teacher or university instructor would be free to copy, display, or otherwise use materials with that license in their NonCommercial classroom teaching. But what if they don't make copies of the materials themselves, but instead rely on commercial services to make those copies, as is standard practice in many school systems? Does using a commercial provider make the copying commercial and thus forbidden under the NC-license? This type of question has discouraged some users from relying on NC-licensed materials. Fortunately, two recent cases have helped clarify this issue.

In *Great Minds v. FedEx Office & Print Services, Inc.*, No. 17-808 (2d Cir. 2018), the court considered a case where a school district asked the for-profit **FedEx Office** to reproduce materials that included a curriculum called “Eureka Math” developed by a nonprofit called **Great Minds** and licensed under CC BY-NC-SA 4.0. In a similar case, the Ninth Circuit considered a school system's reliance on Office Depot to make copies of NC-licensed materials. In both cases, CC itself took a public position that the licenses did not preclude this practice. CC issued public statements and filed an amicus (“friend of the court”) brief arguing that so long as commercial actors are not acting independently for their own commercial gain but solely on behalf of NonCommercial actors, they are protected by the license granted to the NonCommercial actors.

In 2018, the Second Circuit held that the NC-license “unambiguously” permitted the school district to rely on **FedEx Office** to make copies. In January of this year, the U.S. Court of Appeals for the Ninth Circuit reaffirmed that interpretation and CC's argument, “which allow bona fide NonCommercial reusers to hire out the making of copies of NC-licensed content, even to profit-making businesses such as **Office Depot** and **FedEx Office**.”

Between clear statements from **Creative Commons** and these two recent decisions, educators can feel much more confident in using NC-licensed materials in their teaching, even when they rely on commercial third parties to make copies of those materials for their classroom. These decisions substantially strengthen the

open scholarly and pedagogical practices that rely on CC licenses and should go a long way towards allaying concerns about using or relying on NC-licensed materials.

QUESTION: *An instructional librarian asks about the ability of libraries, instructors, and publishers to provide captioning or otherwise make accessible materials still under copyright.*

ANSWER: Providing captions is central to the mission of providing accessible materials, but questions about copyright have made many uncertain about their ability to remediate inaccessible texts. As a 2019 white paper from ARL and the **University of Virginia Library** observed, many institutions planning for accessibility “have been uncertain about what is permitted, and have constrained their activities in support of civil rights out of fear of violating copyrights.” <https://www.arl.org/resources/the-law-and-accessible-texts-reconciling-civil-rights-and-copyrights/>

In fact, copyright law clearly supports accessibility efforts including captioning. The signal case in this area is *Authors Guild v. HathiTrust*, 755 F.3d 87 (2d Cir. 2014). In *Hathi*, the Second Circuit reviewed a scanning project by the **HathiTrust Digital Library (HDL)** that makes its collection available to students with print disabilities by offering them secure system access for screen readers. **Hathi** was sued by the **Authors Guild** for copyright infringement but the district court found in favor of **Hathi's** program, noting that the court “cannot imagine a definition of fair use that would not encompass the transformative use made by [HDL].” On appeal, the circuit court did not find the use to be transformative but still concluded, “fair use allows the libraries to provide full digital access to copyrighted works to their print-disabled patrons.”

Other areas of law also support accessibility work such as captioning including Section 121 (often called the Chafee Amendment). In 2019, the U.S. also ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which facilitates the creation of accessible versions of books

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and other copyrighted works and makes it easier for accessible copies to be created and shared across international borders.

In light of this broad support for accessibility under the law, cultural institutions have been stepping up efforts to make their materials more accessible, including **Harvard**, which reached a settlement with the **National Association of the Deaf (N.A.D.)** in late 2019. Under a consent decree, **Harvard** agreed to institute a series of new guidelines to make the university's website and online resources accessible for those who are deaf or hard of hearing as part of a larger new digital accessibility policy. Captioning is clearly in line with the mission of cultural institutions, copyright clearly supports that work, and the rising tide of work to make materials more accessible is great to see.

QUESTION: An archivist asks who owns copyright in the maps in our collections?

ANSWER: Maps are one of the more interesting areas of copyright, with a history that goes back to the first United States *Copyright Act*, titled “*An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned.*” As this (illuminating but somewhat unwieldy) title suggests, maps have been explicitly included among the works that copyright protects from the beginning of U.S. copyright law.

Despite this long history, maps present an interesting copyright challenge since so much of what is presented in a map is factual information that is not protected under copyright law. A core principle of the law is that copyright does not cover facts and systems. Given that many maps are basically pictorial representations of geographic and demographic facts organized to allow the user to readily understand and easily extract that factual information, where might copyright apply?

More than a century ago, the Supreme Court addressed this question in *Perris v. Hexamer* 99 U.S. 674 (1879), where the Court held that a copyright in New York maps did not extend to a “system of coloring and signs” for identifying real property characteristics or to a “key” which explained symbolic meanings of coloring and signs. In the leading modern case in this area, *Feist Publications, Inc.*,

v. Rural Telephone Service Co. 499 U.S. 340 (1991), the Supreme Court reaffirmed that facts are not protected but that creative selection or arrangement of facts can be protected with a “thin” copyright, as can design elements that are sufficiently creative.

So, the basic rule today is that the facts represented on a map and the systems of presenting information are not protected, but the creative elements and creative selection and arrangement may be. Several recent cases raised these questions in some unusual circumstances. First, early this year the **New York City Metropolitan Transportation Authority (MTA)** filed a takedown request under the *Digital Millennium Copyright Act* against a seller on Etsy who created their own version of a New York subway map. In a second map-related case, *Victor Baker v. Penguin Random House, L.L.C.*, W.D. Tex., No. 20-004, mapmaker **Victor Baker** accused **Netflix**, along with **Amazon** and producer **Penguin Random House**, of using an antique-style map he created in the background of several scenes of the film *Lay the Favorite* without permission.

Despite this seeming uptick in map-related legal claims, most libraries probably don't need to be very worried. Both of these examples involved commercial actors and appear to be legal threats that may be quietly settled or dropped. For maps in our own collections the same rules we have always relied on remain in force and the terms of a donor agreement may have as much to say about both who owns the physical artifact and who (if anyone) controls copyright in maps held at a particular institution.

QUESTION: What new works are entering the public domain this year?

ANSWER: As a reminder, this is the second year we have celebrated a new annual class of works entering the public domain since the *Copyright Term Extension Act (CTEA)* of 1998 extended copyright terms for 20 years. With the exception of some unpublished works, most works that were scheduled to enter the public domain over the past two decades did not. In 2018, we welcomed the first new class that included works such as **Cecil B. DeMille's** *The Ten Commandments* as well as providing more certainty about works such as **Robert Frost's** famous poem “Stopping by Woods on a

Snowy Evening” whose copyright status had been uncertain.

On January 1, 2020, we again celebrated Public Domain Day and welcomed thousands of new works into the fold including **Buster Keaton's** *Sherlock, Jr.* and *The Navigator*, **A.A. Milne's** *When We Were Very Young*, and *Rhapsody in Blue* by **George Gershwin**. A more complete list of notable works entering the public domain is available from **Duke's Center for the Study of the Public Domain** at <https://web.law.duke.edu/cspd/publicdomainday/2020/> as well as from **The Public Domain Review's Class of 2020** website at <https://publicdomainreview.org/blog/2020/01/public-domain-in-2020>.

It is exciting to welcome so many works into the public domain, but Public Domain Day is also a nice opportunity to reflect on the changing duration of copyright. The **Center for the Study of the Public Domain** site notes that under the laws that were in effect until 1978, thousands of works from 1963 would also be entering the public domain. Indeed, under the original *1790 Act* a renewable term of fourteen years could have placed materials from the 1990s and 2000s in the public domain as well.

Of course, calculating the public domain status of a particular work can be particularly complicated. Many works created or published after 1925 are in the public domain due to failure to comply with the formalities that were once required for copyright. Some unpublished works created before 1925 may also still be protected. While many global copyright rules have been harmonized by the **Berne Convention for the Protection of Literary and Artistic Works**, many nuances and technical issues remain and those can be substantial barriers for assessing the status of a work. While there are many excellent resources for understanding the public domain and calculating the rights status of particular works, it seems appropriate to close this column with a recognition of **Lolly's** own “When Works Pass Into the Public Domain” chart that guided practice in this area for so long and is recognized in innumerable current resources such as: <https://copyright.cornell.edu/publicdomain>. 🐼

