Upcoming Brown Bag Seminar:

**Fair Use in Our University Today**

Presented by Janet Faulkner and Hillary Corbett, Scholarly Communications Librarian; October 17, 12:00-1:00pm in 90 Snell Library.

- Do you use copyrighted works in the classroom, or in course assignments?
- Are you interested in participating in online course preparation?
- Do you plan to assign students to create unique projects as part of their academic program?
- Are you thinking of preparing multimedia presentations for a University course?

Today, there are more options than ever for including copyrightable written and creative work, as well as music and video, in academic materials. Due to changing technology, there also is a wider range of materials which you potentially can make available to your students as part of their University courses, via the Library or through Blackboard. However, if you use other parties’ work, that work may be protected under copyright law.

The concept of fair use under copyright law traditionally has provided a potential way to use copyrightable work within limits. As the availability of creative work has evolved technologically, the concept of fair use has been the subject of intensive consideration. In this workshop, we will update you on new developments in the copyright area, and how that may affect development and availability of course materials at the University. This seminar will be co-presented by Hillary Corbett, Scholarly Communication Librarian of the University Libraries.

If you would like to attend the seminar, please contact the Office of the General Counsel at ext. 2157 with your name, position title and department/area of employment at the University.
**CONTRACTS:**  
*University Approved Templates*

As a reminder, the Office of the General Counsel makes various **template agreements** available on its website for use in the conduct of University business. These templates, if unchanged, receive expedited legal review. All of the templates protect the University in a balanced way, and we strongly recommend their use wherever possible. While several templates are available from our website, following are very brief descriptions of a few of them.

The **long-form Professional Services Agreement, or PSA**, should be used to engage a person or business to provide expertise or knowledge in connection with a University activity. Usually, PSAs are project-based and for a short term. Examples of the sorts of persons or entities engaged under a PSA include consultants, web developers, editors and other persons or entities that provide knowledge-based experience or skills. In most cases, some sort of deliverable is required as part of the services, such as a report, brochure, website, etc., and the PSA describes the University’s rights to that deliverable.

The **short-form Professional Services Agreement** can be used to engage persons or businesses that are paid less than $3000. It is similar in nature to the long-form PSA but is used for smaller dollar projects.

The **Service Provider Agreement** should be used to engage a person or business to provide physical services to the University. In contrast to a PSA, the service provider agreement usually does not entail the creation of intellectual property for the University. Rather, the service provider performs a specific task, such as catering, maintenance, setting up staging or lighting, security or transportation.

The **Non-Disclosure Agreement, or NDA**, is the forerunner to a research and/or collaboration agreement. It should be used whenever any confidential information of the University will be shared with any non-University employee and the parties have not entered another kind of agreement, such as a research or collaboration agreement. Confidential information is generally information about or belonging to the University that is not in the public domain. Student and student-related information is always confidential information.

The **Performer Agreement** should be used whenever engaging a band, singer, dancer, speaker, musician or other performer to perform as part of a University event.

The **Videographer/Photographer Agreement** should be used to engage photographers and videographers. This template protects the University’s ownership in its name, logos, trademarks and images. This template also allows the hiring department to engage the photographer/videographer on a project-by-project basis for the entire term of the agreement.

If you have any questions about these or any of the templates or questions about contracts in general, please do not hesitate to contact us.

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**ELECTION 2012:**  
*Campaign Activity and Political Involvement*

**Campaign Activity and Political Involvement in the University Setting**  
As a non-profit organization, Northeastern University is absolutely prohibited from supporting candidates for any federal, state or local political office, either directly through endorsements and donations of money, time and resources, or indirectly by providing an exclusive forum to any candidate. The following explains how certain groups within the University are impacted by the University’s obligation to remain neutral in political campaigns.

**The University-wide Community:**  
Every member of the University community has a right to participate in the democratic process, and no person is restricted from participating in political activity or supporting certain candidates for election. However, as an institution, the University may not participate or intervene in any political campaign for public office. Members of the University community must make clear that when making political statements or engaging in political activity, they are expressing their individual view and are not stating a University position.

**Students and their Organizations:**  
Student organizations must work through the Office of Student Affairs to obtain approval for any proposed political activity, including rallies, demonstrations, speeches, etc.

**Faculty and Staff:**  
As mentioned earlier, while no University employee is barred from engaging in political activity, such activity must not involve the use of University resources, including the University’s time, space or funds.

**Event and Function Planners:**  
Candidates for political office are barred from speaking to groups on campus, unless a similar invitation is extended to that candidate’s opponent(s). As there are a number of potential pitfalls in connection with such an event, if you are asked to host an event involving a political figure, you should immediately contact the Offices of the General Counsel and Government Relations to facilitate the planning of this event in a manner consistent with the University’s obligations as a non-profit entity.
**IMMIGRATION: Rise in H1B Site Visits**

In 2009, U.S. Citizenship and Immigration Services (USCIS) began deploying contract inspectors to perform on-site inspections of petitioning employers who have sponsored employees in H-1B visa status. Employers and the sponsored employees are often selected randomly and no advance notice is provided prior to a site inspection visit. The purpose of the site inspections is to confirm the information submitted to USCIS when sponsoring an employee in H-1B status and to detect fraud or noncompliance. The general scope of the visit will be centered on the following information: (1) Job title of the employee; (2) Duties performed by the employee; (3) Salary paid to the employee; (4) Dates of employment; and (5) Any other information contained in the H-1B petition filed initially by the employer with USCIS.

**Typically, the site inspectors will and should come directly to the Office of the General Counsel.** Immediately following a site inspection, the College or Department contact and the employee who was randomly selected will be notified by the General Counsel's office of the visit that transpired. In the event that a Northeastern department or employee is directly contacted by a site inspector, you are advised to contact the Office of the General Counsel immediately and to direct the site inspector to our office. Please **do not** answer any questions about anyone’s H-1B employment outside the presence of the General Counsel’s office.

There is no reason for anyone to be alarmed by site inspections since these visits seek to confirm the same information that was already submitted to USCIS for an employee’s current H-1B petition. However, coincident with the fact that other universities and employers have noted a recent increase in site inspections, we again would like to remind all of you of the need to notify the Office of the General Counsel of any and all changes to an H-1B employee’s position. As you are aware, the University is required by immigration laws to amend H-1B petitions filed on behalf of an employee whenever a “material” change takes place. Accordingly, you are reminded that the Office of the General Counsel must be notified before any changes that affect an H-1B employee’s employment at Northeastern takes effect. Failure to amend the petition on file with USCIS when required may subject the University to penalties and sanctions and negatively impact the employee’s status.

**TECH TRANSFER: New Invention Disclosure Form**

The Center for Research Innovation (CRI) has posted a new invention disclosure form on its website. The new form was designed to be easier to use. If you believe that you have invented something, please complete an invention disclosure form and submit it to Northeastern by emailing the form to disclosure@neu.edu. Once the CRI receives your invention disclosure form, the staff there takes the following steps:

1. Reviews the documents for completeness.
2. If there is something that may be patentable, the CRI will file a provisional patent application covering your ideas. A provisional patent application gives the university one year to decide whether it would like to file a “full-blown” patent application.
3. The provisional patent application is then reviewed for patentability and for commercial potential.
4. This information is used to help the University decide whether it can license the technology.
5. If, for whatever reason, the University declines to convert the provisional patent application into a “full blown” patent application, it will return the rights in the provisional patent application to the inventors.

If the University retains the rights to the invention and succeeds in generating revenue from the invention, those revenues are shared with inventors from the NU community according to NU’s policies articulated in the faculty and student handbooks.

To view a copy of the new Invention Disclosure form please visit [http://www.northeastern.edu/research/cri/navigating-nu/submit-invention-disclosure-form/](http://www.northeastern.edu/research/cri/navigating-nu/submit-invention-disclosure-form/) or call the Center For Research Innovation at 617.373.8810.
In September 2012 Cambridge University Press, Oxford University Press USA, and SAGE Publications appealed the decision, Cambridge University Press v. Becker et al., which was issued by a federal court of appeals in Georgia in May of this year. That opinion was largely favorable to the defendants, who all are employees of Georgia State University. The Court found that inclusion of specific copyrighted excerpts in its library’s E-course reserves did not infringe publishers’ copyrights, and fell under the “fair use” exception of copyright law. This means that the library did not need to seek permission from the publishers, and/or pay for use of the particular excerpts under consideration.

The Court of Appeals concluded that the library was allowed to make available written and digital excerpts of the particular scholarly publications to students enrolled in a particular course without first obtaining a license from the publisher based upon the weighing of four factors of fair use. For example, the Court found it important that the amount of material sampled from a particular work was “decidedly small,” and the portion sampled was not “the heart of the work.” The Court also considered whether there was a reasonably priced, readily available license specifically for digital excerpts. Importantly, this case dealt with excerpts from non-fiction, scholarly publications.

The Court did not extend its decision to use of excerpts from textbooks. While the Becker decision is not binding on other libraries or in Massachusetts, it does provide clarity of what one federal judge found to be fair use of publications for educational purposes. We will discuss the Cambridge University Press decision, and the concept of fair use, in more detail at our October 10th workshop.

Northeastern University strives to operate in an ethical, honest, and lawful manner and expects all members of the University community to conduct their activities in accordance with University policies and applicable law. The University strongly encourages all persons to report unethical or questionable conduct through channels that the University establishes for such reporting. University management expects you to bring forward any concerns to your direct supervisor. However, the Compliance Hotline provides an alternative channel for you to communicate your concerns anonymously. Northeastern has partnered with EthicsPoint to manage the Compliance Hotline which allows any person to report activity to an external party which should alleviate any concerns about confidentiality. Please know that when you use the Compliance Hotline, you can report misconduct that you observe, or you can gain clarity on whether or not something is cause for concern. All questions, allegations, and suggestions forwarded to the Compliance Hotline will be initially reviewed by Internal Audit and responded to in a timely and appropriate manner.

If you have questions about the Compliance Hotline, please contact the Director of Internal Audit at 617-373-4041. To report an anonymous and confidential concern to EthicsPoint, call 1-855-350-9390 or go to northeastern.ethicspoint.com.
The Office’s name change has gone into effect and will now be known as “The Office of the General Counsel.”

The Office’s website will also be updated and activated this month.

Global Entrepreneurship Week (November 13th-16th). Northeastern is one institution recognizing Global Entrepreneurship Week, a world-wide celebration of the innovators and job creators who launch startups that bring ideas to life, drive economic growth and expand human welfare.

The Center For Innovation will be co hosting a panel discussion with the Law School regarding The Affordable Care Act, grant opportunities and its implications for intellectual property and innovation on November 16th. Please contact Julie Myers at j.myers@neu.edu if interested in attending or participating in this panel.

If you have any questions you would like to see answered in this space, please submit them to the Office of the General Counsel at 378 Columbus Place. Depending upon the nature of your question, we will either answer you personally or address your issue in a future edition of this newsletter.

Of Counsel has been prepared as a general summary of important developments. It is not intended as individual legal advice. Should you have any questions or need information concerning a specific situation or any of the content of this advisory, please contact the Office of the General Counsel, 378 Columbus Place, x2157.

This edition of Of Counsel was prepared with the assistance of Northeastern University School of Law student Julie Myers.

Apple Inc. v. Samsung Electronics Co., Ltd.

On August 24, 2012 a Jury awarded Apple $1 Billion dollars for patent infringement by Samsung. Interestingly, half of the patents in the law suit were design patents, and the other half of the patents were functional patents. Design patents protect how something looks, not how it functions. Although design patents have not historically been litigated in such high stakes cases, patent practitioners are predicting that the Apple v. Samsung case will increase the amount of design patent applications being filed. If you believe have developed an invention appropriate for a design patent that is specifically linked to a function, or an invention which may have implications for an invention which may be a component of a branding strategy, please contact the Center for Research Innovation about potentially filing an Invention Disclosure Form.

Clifford Streit v. Candace Bushnell

"Sex and the City" author Candace Bushnell recently settled a suit against her former business manager, Clifford Streit, who claimed she reneged on an agreement to pay him royalties from the series’ films and television episodes. Streit had filed the complaint in February, however, the breach of contract case was dismissed on September 12th after the parties agreed to settle. Streit was granted a 7.5 percent share of Bushnell’s future take, but Bushnell allegedly stopped paying after compensating Streit $230,000 in October 2009. Streit claimed he was owed more money, and he asked the court to order her to pay him at least an additional $150,000 citing the international success of the syndicated episodes of Sex and the City, two films soundtracks and DVDs. The New York federal court will retain jurisdiction over the case in order to enforce the latest settlement agreement. When even famous writers such as Candace Bushnell are susceptible to disputes over the meaning of contract terms, it is important to remember to carefully read and to understand the terms of any agreement you may be seeking to enter into.