



**Performance Poetry Preservation Project, Inc.
American University Meeting Notes**

These notes are from a meeting that took place over March 8 and 9, 2014, at [American University Washington College of Law \(WCL\)](#) in Washington, D.C. The meeting was hosted by WCL's [Glushko-Samuelson Intellectual Property Law Clinic](#) at the request of [Performance Poetry Preservation Project, Inc. \(P4\)](#) to inform P4 of the ramifications that copyright law has on its mission to collect, preserve and expose recordings of performed poetry to scholars and the general public.



Meeting participants, left to right:
(Top) Gerry Stacy, P4; Wess Mongo Jolley, P4; Ken Brady, Student Attorney, WCL; Tom Bouliane, P4;
Scott Woods, P4 consultant; Susan Somers-Willett, P4 Consultant.
(Bottom) Liz Vaysman, Student Attorney, WCL; Cristin O'Keefe Aptowicz, P4.
Photo taken by Prof. Peter Jaszi, WCL

INTRODUCTIONS

As the members of the P4 contingent introduced themselves, Susan Somers-Willett asked that the relevance of the Americans with Disabilities Act (ADA) be discussed with regard to requirements of the pending P4 website upgrade. The ADA [Title III regulations](#) are written to establish accommodations within physical spaces such as buildings or similar facilities, and over common carrier communications systems such as telephone systems. Websites and other Internet-based means of communications are not mentioned.

Liz Vaysman described the Intellectual Property Law Clinic as consisting of 16 student attorneys and three faculty advisors. Cristin O'Keefe Aptowicz asked during the session overview description what documents can be expected from this meeting. Ken Brady replied that a toolkit of contracts and similar instruments, to include poet releases, venue agreements, website and repository terms of use, would be given to P4 for future use. The language used in these documents would emphasize clarity and uniformity to simplify their meaning and acceptance.

COPYRIGHT LAW

Ken and Liz then led an "IP Crash Course" to familiarize the P4 attendees with the rudiments of [copyright law](#). The content included information on copyright basics and the rights limitations grants for fair use, the rudiments of which can be summarized as:



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Copyright Basics

- Copyright provides protection to the creators of original works of authorship, including literary, dramatic and audiovisual works.
- The protection is given to both published and unpublished works.
- Published works are those that are or have been distributed to the public.
- Copyright protection begins at the time of a work's creation in fixed form, i.e., when it is written or recorded.
- Authors of joint works are co-owners of the copyright.
- Copyright owners have exclusive rights to do practically anything with the protected work.
- It is illegal for anyone to violate the owner's exclusive protected rights.
- Registration is not required, but has advantages:
 - Makes a public, searchable record of the copyright, and
 - Permits infringement lawsuits.
- Multiple works can be registered simultaneously.
- Copies of published works must be deposited to the Library of Congress.
- A single deposit can be used for both registration and Library purposes.

Fair Use

- There is no copyright infringement if the work is used for criticism, comment, teaching, scholarship or research
- Determination of fair use is contingent upon:
 - The purpose of the use
 - Whether the use is for commercial or nonprofit education purposes
 - Whether the work has been changed into a new form
 - This can include adding or altering to produce a new expression
 - The more transformative, the less important the other factors
 - The nature of the work
 - Strictly informational works, i.e., a telephone directory, are not protected
 - The amount and substance of the portion of the work used
 - Is the amount used reasonable to the purpose?
 - The effect of the use on the potential market or value of the work
 - Copies cannot compete with the original in the marketplace
 - The harm from lost licensing opportunities can bear on liability

There are other, unspecified, factors to fair use that are also relevant. It is quite possible, for instance, that the public benefit derived from the unauthorized use of a protected work may outweigh the strictures of copyright. Further, good or bad faith may be considered a mitigating factor when judging fair use. And an author's denial of permission to use the protected work does not prevent fair use that is otherwise permitted. Finally, Article 108 of the copyright law states that



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libraries and archives may, under certain conditions, reproduce protected works for purposes of preservation and for deposit in another library for research.

SEVEN P4 QUESTIONS

Prior to the meeting, P4 submitted to Liz and Ken seven questions that bear specifically upon its plans:

1. What are the legal rights to collect, store, transform, manage, and catalog the audio and video content we aspire to have in the P4 repository?
2. What are our rights to expose the material in the academic, poetry, and public spheres?

Poems, whether or not published, and including new versions of previous works, are subject to statutory copyright. In fact, P4 would be wise to consider all slam poetry to be covered. P4 should always seek to obtain the poet's authorization for use but, if denied, fair use may apply. Take-down notices could, nonetheless, facilitate relations with the slam community.

3. What are the differences in rights when it comes to different media in different venues/formats?

In the case of audio or video recordings, copyright might be shared by several "authors." For example the poet who created the poem may be different from the person who performed it. Also, the recordist played a part in the making of the recording, so also has a creative stake in the recording. All rights holders must give permission for a joint work to be used but multiple rights holders may convey joint rights to a single person who can, in turn, grant rights to others.

4. What concerns will P4 likely face from poets about our gathering and exposing this content?

Some poets may wish to entirely prevent the visibility of some or all of their recorded works, whether for public or scholarly use. Whether to even archive these "denied works" is a P4 policy matter. If archiving is to occur, then the practices needed to protect the desires of the poets wishing exclusion is left to the answers to Question 6, below.

5. What kind of outreach, education, and public relations should P4 conduct in order to ease any concerns among the poets that might arise?

All of P4's messages must be clearly and consistently written to reduce misunderstandings. Talking points should be prepared to help the slam community's leaders carry P4's arguments. Policies and procedures should be established and published examples should simple and straightforward to help their clarity and execution. All contracts, such as poets' releases, should be written in plain language for ready approval. P4 should also consider adding value to the collection's content such as is done my [Poetry Genius](#) and other online resources.



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6. What kind of legal instruments, processes or procedures should P4 adopt to make sure the rights of the poets, and of P4, are clearly expressed and protected?

Drafts of various contracts that could be used to anchor relations with poets, venues, users and other parties will be provided by the Clinic.

Ken also used this opportunity to begin a discussion of technical protective measures (TPM) and digital rights management (DRM). Use should be managed by a suite of digital tools to protect rights and control accessibility. First, all users should be encouraged to register and to log in to P4. Registration will provide P4 with user contact information and present the users with the archive's Terms of Use, to which they must abide. Terms of use should be easily understood, perhaps with examples given. It was also suggested that [Vimeo.com](https://www.vimeo.com) be examined as a model for upload permissions. Tracking tags, such as digital watermarks or fingerprints, might be used to allow the detection of unauthorized copying of the archive's contents.

A discussion then occurred on the topic of varying access to the archive in terms of poet permissions. It was agreed that a poet should confer or restrict access to his or her poems. The first step would be to confirm the poet's identity before providing this capability. Once done, the poet would then assign one of four levels of access to each of his or her poems:

1. Social
 - Open to all viewers
 - No restrictions on use
 - Poet take-down shunts poem to one of other three levels.
2. Public
 - Requires user sign-in
 - Some restrictions apply, such as streaming-only
3. Scholar
 - Requires .edu sign-in address or other way of authenticating scholarly use
 - Has only fair use rights, but to all Level 1-3 content
4. Blind
 - Unavailable to any but the poets themselves, and to archive curator(s) only for curatorial purposes.

Poets should retain access to all of his or her poems, regardless of level, and be able to change access levels at will. For material at access levels other than Social, users should be given the opportunity to gain poet permissions to, for example, download poems from the archive. It was also suggested that verbiage be added to poet contracts to permit P4 use for other purposes, such as podcasts.

7. What legal issues should P4 address in its search for a repository partner?



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For potential academic library partners, an agreement memo which clarifies the fair use risk assessment should be drafted. P4 agreed to provide WCL with a vision statement for the new website's overall structure and the archive's implementation details.

Ken also addressed the possibility of a private partner by first pointing out that having a commercial partner is not necessarily detrimental. The broad publicity that a commercial partner could give to the poetry, for instance, would enhance the value of the publicized poem and raise the poet's public visibility. The shortcomings of such a partnership, on the other hand, will affect fair use with regard to commercial use and materials taken from commercial sources (e.g., HBO). A commercial tie may also complicate potential public repository relationships.

P4'S HANDLING OF RECORDINGS

P4-originated Recordings

The second day's discussion was begun by Liz Vaysman with a discussion of P4's role in making new recordings of performed poetry. All parties to the creation of a new recording are co-owners of the rights to the recording, not least the poem author and performer. P4 participants also pointed out that in its case, maintaining favorable relations with the poets outweigh even legal considerations. It was agreed by all that P4 would, as a matter of policy, seek permission from the poets involved before initiating any recordings. Liz reiterated that she and her colleague, Ken Brady, would draft contract language that could be used as a basis for poet release forms.

Since the contemplated recordings would be of live events in private venues, the venue owners and/or lessees would also have rights regarding the use of the recordings. Liz and Ken said that they would draw together suggested procedures to engage these rights holders and language describing the indemnification of owners from any claims for damages.

There are also elements of fair use when recording poetry performances. Copyright law permits copying original works for purposes of news reporting and education, for example, and, in these limited cases, recording permission is not required. P4's amicable relationship with the slam community nonetheless drives P4 to acquire permissions before attempting to record performances.

The principle underlying P4's recording, whether directly by P4 or by others sanctioned by P4, is that poets' rights and concerns trump other considerations. P4 should make a distinct effort to make clear to the slam poetry community that it firmly supports the welfare and sensitivities of poetry's creators.

Received Recordings

Ken Brady led the discussion of P4's handling of recordings made by others. All of the poetry instances in P4's existing collection were either donated by members of the slam community or, in a few cases, were purchased by P4. It is contemplated that many future contributions will be submitted digitally, that is, by online uploading of digital files containing audio or video recordings of poetry performances. However



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received, and while not legally necessary for the purposes of archiving, the exposure of the recordings to the public should be permitted by the rights holders, preferably through the use of traceable permissions documents.

Even though the exposure of P4's archive's holdings would benefit the public, and the poets themselves, it will be P4's policy to always seek permission before presenting poetry recordings to the public. This will be a simple matter at the time of donation when poets donate their unencumbered original work, that is, recordings to which they hold the exclusive rights. When donated recordings are made by others, or *of* others, the donor will not be able to supply the permissions immediately. In this case, the donations should be accepted for archival purposes only and be held from public exposure until the necessary permissions are obtained from all rights holders.

But, even then, many donated recordings are and will be historical in nature, and it will often be impractical or impossible to identify all of the rights holders. When this proves to be the case with a particular recording, P4 may consider it acceptable to expose it with a notice that emphasizes that copyright protection exists nonetheless. Such notice might include clauses that report to viewers that the recording is covered by copyright by default, that the recording's rights holder(s) have not been identified, that P4 requests the viewer's help in locating the rights holder(s), and that the user accept responsibility for using the recording properly.

In all cases, the permissions received should be themselves archived to produce a coherent record of P4's diligence in this area.

Digitizing Recordings

Ken also discussed the matter of digitizing or otherwise reformatting P4's collection. There are three main reasons that P4 would transfer recordings to new media: to prevent content loss due to original media degradation, to prevent content loss to media obsolescence, and to render the content suitable for access over networks and the Internet for education and research purposes. These are all "fair use" justifications for making copies of works protected by copyright law.

Educators and researchers will have challenges reviewing the material in P4's archive, if only because of the extent and variety of the collection. It will be necessary, therefore, to not only digitize and catalog the items in the collection, but also to index the content of each item with regard to important literary, historical, humanitarian, social and similar elements that are important to investigators and educators.

Further, textual transcriptions of poetry that would otherwise be available only aurally would facilitate the transfer of poetic meaning embedded in the archive's contents to its users. Also, some of the collection's items have accompanying physical matter, such as labels or inserts that provide information pertinent to the poetry itself: visual copies of these should be linked to the poetry. Finally, physical ephemera produced over the course of slam's history, such as posters, programs and similar event-specific materials, should be made available to users interested in the broader aspects of slam poetry.



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It is P4's intent to enhance its collection of recorded poetry performances by facilitating each of the activities described above and by making the results available to researchers and the public. Doing so would fundamentally transform the recordings in P4's collection from individual instances to elements of a tabulated and supplemented aggregation of poetic information, an entity which would be considerably more valuable to the interests of individual users and society at large.

Providing Access to the Recordings

The conversation returned to the issue of giving poets and others access to the P4 collection. One possibility is to allow poets to upload their poetry directly to the archive. Like the other donations mentioned above, it is important that P4 obtain the poets' permission to use the uploaded file contents in ways consistent with its mission. It is understood that receiving permission is not necessary for fair use, but the larger interests of poets and P4 alike would benefit from concrete authorizations. The permissions could be conveyed through the registration and login procedures alluded to in the discussion of Question 6 above. It would be useful, though, to ensure that P4 and the poets understand and agree to P4's curatorial responsibilities for uploaded content.

Where possible, online contributors must be identified and verified and permissions must be acquired. Those in the educational and research communities should also be vetted to ensure that they qualify to enter the access levels assigned by the poets as described in the discussion of Question 6. In all instances, with the Social level excepted, users should be required to register for archive access and to log in with passwords to verify their identity.

DOCUMENTS AND OTHER CONSIDERATIONS

Liz and Ken concluded the meeting by reaffirming their intent to provide P4 with documents to form the basis for agreements between P4 and its "audiences." These groups were defined as:

- Donors of archive materials
- P4 organizational partners
- Rights holders
 - Poets
 - Publishers
 - Casual and professional recordists
 - Venues and slammasters
 - These will require practices, procedures, and rights documents for future and ongoing recordings
- Users
 - Academic
 - Teacher
 - Public
 - Poet



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It was also emphasized that the following should be considered when composing the documents:

- Clauses that define and manage offensive content
- Author verification
- Verification of secondary rights holders
- Provisions for non-exclusive rights
- Acknowledgement of rights transfer
- Control of content exposure
- Conditions for or restrictions on advertising association, both commercial and promotional

CONCLUSION

The meeting taught P4 that copyright law provides poets strong legal rights over the use of their creations while simultaneously permitting teachers, scholars and researchers ample freedom to explore and add to the work for the benefit of society. P4 will continue building its strong relationship with the slam poetry community and use this knowledge to expand slam's visibility and recognition among its academic and public audiences.

ACKNOWLEDGEMENTS

The Board of the Performance Poetry Preservation Project wishes to thank the American University Washington College of Law and its Glushko-Samuelsan Intellectual Property Law Clinic for providing the opportunity and facilities for this meeting. We are particularly thankful for the introduction to the topic given by Professor Peter Jaszi and for the impressive efforts of student attorneys Liz Vaysman and Ken Brady. Poets and scholars Susan Somers-Willett and Scott Woods lent their time, experience and intimate knowledge of slam and its constituents to anchor the discussions in reality. We thank them for this and for their ongoing contributions to slam and its community.

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