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The Changing Landscape of Digitization and Preservation

Sharon Bradley

University of Georgia School of Law Library, bradleys@uga.edu

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The Changing Landscape of Digitization and Preservation

A Brief, Very Brief, Look at Current Legal Issues in Digital
Preservation



Sharon Bradley

Special Collections Librarian
University of Georgia School of Law

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So Many Legal Issues

- Intellectual property - Copyright
- Privacy
 - Sharing folk or ethnographic materials
- Obscenity
- Security
- Defamation
- Access
 - Americans with Disabilities
 - Easy and wide variety



Legal Duty of Stewardship

- Accepting legal responsibilities
- Products Liability Approach
 - Sue for loss
 - Bailment



Copyright is not a cudgel nor an obstacle

- Legal basis
 - 17 U.S.C. § 108
 - 17 U.S.C. § 1204(b)

Two Cases of Note

- Authors Guild v. Google Books (2013)
- Authors Guild v. HathiTrust (2014)



HATHI
TRUST





“Significant Public Benefit”

- Public good
- Shared benefit
- Cultural memory
- They don't know what we do



Academic and Legal Publishing

- Integrity of scholarship
- Reference rot
- Distributed caching
- Undermine legal authority
- Evidentiary issues



Some Other Crazy Ideas

- More Formal Collaborative Efforts
 - Partnerships
 - Limited Liability Companies



Call to Action

- Report of the Task Force on Archiving of Digital Information, Preserving Digital Information 1996
- Section 108 Study Group 2008