

**Law 820: IP Law & Policy: The Future of Publishing**  
Thursday, 4:10 pm to 6:10 pm, 1070 South Hall  
Paul Courant & Jessica Litman

**Draft Tentative Syllabus**

**Assigned texts:** We have asked you to purchase ANDREW ALBANESE, *THE BATTLE OF* \$9.99 (2013), available only as an ebook for \$1.99 from [Amazon](#), the [Apple iBookstore](#), [Barnes & Noble](#), [Google Play Books](#), or [Kobo](#). We have also recommended that you acquire a copy of LEWIS COSER, CHARLES KADUSHIN & WALTER POWELL, *BOOKS: THE CULTURE AND COMMERCE OF PUBLISHING* (1982), from which we will be assigning three chapters. That book is out of print, but inexpensive used copies are widely available through ABEBooks, Amazon marketplace, Alibris, or Half.com. (*Search for it [here](#) or [here](#).*) In addition, we have put three copies of the book on course reserve. Finally, we are recommending, but not requiring, that you purchase AARON PERZANOWSKI & JASON SHULTZ, *THE END OF OWNERSHIP* (2016), which is available as a new paper book for \$23, as a used paper book for \$ 15, an audiobook for \$25, or as an ebook for \$17. As a University of Michigan student, you can read the book for free via Project Muse here: <https://muse.jhu.edu/book/48670/>. It's a terrific book, though, and we plan to assign more than half of it. Other reading assignments will be at links on the web, in electronic databases for which the University has purchased a subscription, or in files posted on Canvas.

**Weekly papers:** Each week (except for the first week), we are asking you to write either a 300-word paper responding to one of the assigned readings or a 800-word paper discussing a particular question or topic. (Writing topics are subject to change and will likely be revised. Check the syllabus.) You should submit your weekly papers no later than 9:00 a.m. on the Tuesday before each class via the “assignments” section of the Canvas site.

**Final Project:** We will divide the class into teams for the purpose of your final project. Each team will work together to create, publish, and sell a work of authorship on the topic of the future of publishing. The work may take any form amenable to all of the members of the team, but must be published and available for purchase on or before Wednesday April 11. More details on the project are [here](#).

**Reading Assignments:** Reading assignments are subject to change and will almost certainly be revised. Please check the current version of the syllabus before beginning the week's reading. If we change an assignment after the prior week's class, we promise to send you an email letting you know.

**Grades:** Your grades will be based on a combination of your weekly papers, your class discussion, and your final project.

**Learning Outcomes:** Students in the course will acquire a set of tools that will enable them to understand the many ways in which technical change (notably the internet and the ease of copying and distribution that go with it) has affected the publishing industries and the uses of published work. These tools include an understanding of intellectual property law – especially copyright – as well as economic, historical and institutional analysis. By the end of the semester, students will have developed a rich set of understandings about the roles of all of the actors involved in publishing and bringing content to market, and will themselves gain real-world experience in creating, producing, and selling a publication.

**Class Policies:**

- We require you to attend every class.
- It is the policy and the desire of the law school to provide reasonable accommodations for students with disabilities. Students who may require some kind of accommodation should speak with Dean Bayrex Marti in the Office of Student Life (734-764-0516) or the University Services for Students with Disabilities in G 664 Haven Hall (734-763-3000)

**Week 1 (January 11): Introduction**

**Reading Assignment:**

1. AARON PERZANOWSKI & JASON SCHULTZ, *THE END OF OWNERSHIP - Introduction* (<https://muse.jhu.edu/book/48670/>) (2016)
2. CLAY SHIRKY, *COGNITIVE SURPLUS*, pages 42-63 (*posted on [Canvas](#)*)
3. JONATHAN TAPLIN, *Introduction* and *Chapter 5: Digital Destruction* from *MOVE FAST AND BREAK THINGS* (2017) (*posted on [Canvas](#)*)

4. Barbara Garson, If Only Page Views Were Dollars,  
<http://www.publishersweekly.com/pw/by-topic/columns-and-blogs/soapbox/article/63987-content-provider-goes-bacterial-but-who-will-pay-her.html>

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## Week 2 (January 18): Basic Intellectual Property Law, Economics & Policy

### Writing Assignment:

- Write a 300-word paper reacting to the chapter from Perzanowski's & Schultz's book. Upload your paper to Canvas by 9:00 am on Tuesday, January 16.

### Reading Assignment:

1. NIVA ELKIN KOREN & ELI SALZBERGER, THE LAW AND ECONOMICS OF INTELLECTUAL PROPERTY IN THE DIGITAL AGE (2013), CHAPTERS 3 & 4 (pp. 58-145) (posted on [Canvas](#))
2. US Constitution, Article 1, section 1, clause 8,  
<http://www.gpo.gov/fdsys/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf> (at pages 4-5)
3. 17 USC § § 102, 106, 107,  
<http://copyright.gov/title17/92chap1.html>
4. AARON PERZANOWSKI & JASON SCHULTZ, [The End of Ownership 15-33](#) (2016) (Chapter 2)
5. Excerpt from Paul N. Courant & Elisabeth A. Jones, *Scholarly Publishing as an Economic Public Good*, in MARIA BONN & MICHAEL FURLOUGH, GETTING THE WORD OUT (2014) (posted on [Canvas](#))
6. Ruth Towse, *What we Know, What we Don't Know, and what Policy Makers would Like Us to Know about the Economics of Copyright*, 8 Rev. Econ. Res. on Copyright Issues #2 101 (2011) (posted on [Canvas](#))
7. Diane Zimmerman, *Copyright As Incentives: Did We Just Imagine That?*, 12 Theoretical Inq. L. 29 (2010) (posted on [Canvas](#))

### Optional Additional Reading:

- WILLIAM PATRY, MORAL PANICS (2009), chapter 4, pages 61-96 (posted on [Canvas](#))
- CARL SHAPIRO & HAL VARIAN, INFORMATION RULES: A STRATEGIC GUIDE TO THE NETWORK ECONOMY (1999) CHAPTER 2, PP 19-29 (posted on [Canvas](#))
- JONATHAN GRUBER, PUBLIC FINANCE AND PUBLIC POLICY 130-37, 183-206 (4<sup>TH</sup> ED. 2013) (posted on [Canvas](#))

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### [Week 3 \(January 25\): Publishing until now](#)

#### Writing Assignment:

- Write a 300-word paper reacting to the 2d Circuit decision in *American Geophysical v. Texaco*. Upload your paper to Canvas by 9:00 am on Tuesday, January 23.

#### Reading Assignment:

1. LEWIS COSER, CHARLES KADUSHIN & WALTER POWELL, BOOKS: THE CULTURE AND COMMERCE OF PUBLISHING 13-35, 224-59, 362-74 (1982) (on course reserve)
2. Cass T Miller & Julian Harris, *Scholarly Journal Publication: Conflicting Agendas for Scholars, Publishers, and Institutions*, 35 J. Scholarly Publishing #2, at 73 (2004) (via [Project Muse](#))
3. Association of American Publishers [Infographic](#): *The Quality, Integrity, Dissemination, and Preservation of Scholarly Reserach Depends on Publishers* (2016)
4. Note on *American Geophysical v. Texaco* (posted on [Canvas](#))
5. *Caught in the Web: The Internet is bound to do serious damage to the newspaper business*, The Economist (July 15, 1999) (posted on [Canvas](#))
6. Clay Shirky, blog post: *Newspapers and Thinking the Unthinkable*, <http://www.shirky.com/weblog/2009/03/newspapers-and-thinking-the-unthinkable/>

#### Optional Additional Reading:

- Ruth Towse, *Economics of Copyright Collecting Societies and Digital Rights: Is There a Case for a Centralised Digital Copyright Exchange*, 9 Rev. Econ. Research on Copyright Issues #2 at 3 (2012) (*posted on [Canvas](#)*)
- Association of American University Presses, [Handbook: Best Practices for Peer Review](#) (2016)

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## Week 4 (February 1): How Digital is different

### Writing Assignment:

- Write a 300-word paper reacting either to Theresa Elsey's talk or to Emily Bell's article. Upload your paper to Canvas by 9:00 am on Tuesday, January 30.

### Reading Assignment:

1. Niva Elkin-Koren *The Changing Nature of Books and the Uneasy Case for Copyright*, 79 GW L Rev (2011) (*posted on [Canvas](#)*)
2. Dominique Raccach, [blog post, On ebooks: A Publisher's View of the Digital Transformation](#) (2010)
3. Do 20th Century Publishing Contracts Convey the Right to Publish eBooks? (Note on *Random House v. Rosetta Books* and *Harper Collins v. Open Road Media*) (*posted on [Canvas](#)*)
4. *Symposium: Book Publishing in Transition*, Authors Guild Bulletin (2011) (*posted on [Canvas](#)*)
5. Maggie Stiefvater blog post, [I've Decided to Tell You Guys a Story About Piracy](#) (Oct. 30, 2017)
6. Terrence Ross, *The Death of Textbooks?*, <https://www.theatlantic.com/education/archive/2015/03/the-death-of-textbooks/387055/>
7. Theresa Elsey, [When Nothing Ever Goes Out of Print](#), (2016) (ebookcraft conference talk )
8. The Economist, *Bulletins from the Future: The News Industry* (2011) (*posted on [Canvas](#)*)

9. Emily Bell, [Who Owns the News Consumer: Social Media Platforms or Publishers?](#), Columbia Journalism Review (June 21, 2016)

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## Week 5 (February 8): First Sale Doctrine

### Writing Assignment:

- Write an 800-word paper exploring the arguments in favor of and against applying the copyright first sale doctrine to digital copies of works. Upload your paper to Canvas by 9:00 am on Tuesday, February 6.

### Reading Assignment:

1. *Kirtsaeng v Wiley*, 568 US 519 (9013) (*edited*) (*posted on [Canvas](#)*)
2. *Capitol Records v. Redigi*, 934 F. Supp. 2d 340 (SDNY 2015) (*edited*), appeal pending (*posted on [Canvas](#)*)
3. AAP Testimony, 2014 House Hearing on 1<sup>st</sup> Sale,
4. AARON PERZANOWSKI & JASON SCHULTZ, THE END OF OWNERSHIP 35-81 (2016) (Chapters [3](#) & [4](#))
5. Jennifer Jenkins, [Last Sale? Libraries' Rights in a Digital Age](#), 79 College and Research Libraries News 69(2014)

### Optional Additional Reading:

- Patent Application [# 20110302009](#) for “Referring, Lending, and Reselling Digital items”
- Vernor v. Autodesk*, 621 F.3d 1102 (9th Cir. 2010) (*edited*) (*posted on [Canvas](#)*)
- Brief of *Amicus Curiae* Association of American Publishers in *Capitol Records v. Redigi* (filed May 11, 2017) (*posted on [Canvas](#)*)
- Brief of *Amicus Curiae* American Library Association *et. al.* in *Capital Records v Redigi* (filed Feb. 14, 2017) (*posted on [Canvas](#)*)

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## Week 6 (February 15): eBook pricing

### **Writing Assignment:**

- Write a 300-word paper reacting to the Second Circuit's decision in *US v. Apple*. Pay some attention to the views expressed by both Foerr and Green.

### **Reading Assignment:**

1. ANDREW ALBANESE, *THE BATTLE OF \$9.99* (2013)
2. *United States v Apple* (2d Cir. 2015) (edited) (posted on [Canvas](#))
3. FRANKLIN FOERR, *WORLD WITHOUT MIND: THE EXISTENTIAL THREAT OF BIG TECH* 78-92 (2017) (posted on [Canvas](#))
4. Amanda Green, *The Delusions Continue*, Mad Genius Club Blog Post, <https://madgeniusclub.com/2017/10/17/the-delusions-continue/> (Oct. 17, 2017)

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## Week 7 (February 22): Digital Rights Management

### **Writing Assignment:**

- 300-word paper *TBA*

### **Reading Assignment:**

1. CORY DOCTOROW, *INFORMATION DOESN'T WANT TO BE FREE* 1-34 (2014) (posted on [Canvas](#))
2. AARON PERZANOWSKI & JASON SCHULTZ, *THE END OF OWNERSHIP* [Chapter 7](#)
3. United State Copyright Office, [Section 1201: A Report of the Register of Copyrights](#) i-vii (2017) (Executive summary only)
4. EFF Blog Post, [Copyright Office Proposes Modest Fixes to DMCA 1201, Leaves Fundamental Flaws Untouched](#)

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*Winter break March 1*

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## Week 8 (March 8): Platforms

### Writing Assignment:

- In the past decade, Apple, Amazon, and Google have achieved dominance in different corners of the publishing market: Apple in music downloads and streaming, Amazon in books, and Google in search. They have combined that dominance with massive investments in digital devices and cloud-based computing infrastructure to gain leverage in adjacent and related markets. Each of them appears to want to persuade consumers to live their digital lives entirely within that company's ecosystem. How does the integration and competition of these platforms complicate the market for authors and publishers? Write a 300 word paper and upload it to Canvas by 9:00 a.m. on Tuesday, March 6.

### Reading Assignment:

1. David S. Evans & Richard Schmalensee, *MATCHMAKERS: THE NEW ECONOMICS OF MULTISIDED PLATFORMS* (2016) [Excerpt]
2. Jessica Litman, [\*Antibiotic Resistance\*](#), 30 *Cardozo Arts & Entertainment L.J.* 53 (2012)
3. Emily Bell & Taylor Owne, [\*The Platform Press: How Silicon Valley Reengineered Journalism\*](#) (March 29, 2017)
4. Josh Marshall, [\*A Serf on Google's Farm\*](#), Talking Points Memo (Sept. 1, 2017)
5. Josh Marshall, [\*There's a Digital Media Crash. But No One Will Say It\*](#), Talking Points Memo (Nov. 17, 2017)
6. Douglas Preston, [\*Why is it so goddamn hard to make a living as a writer today?\*](#), *Authors Guild: The Writing Life* (Sept. 15, 2017)
7. Case Study: Amazon Kindle
  - David Gaughran, [\*The Birth of The Kindle\*](#) (Nov. 22, 2017)
  - Mike Shatzkin, blog post: [\*A Changing Book Business: It All Seems to be Flowing Downhill to Amazon\*](#) (Jan. 22, 2018)
  - Kindle Direct Publishing: [\*Self-publish ebooks and and paperbacks for free with Kindle Direct Publishing.\*](#)
  - Kindle Unlimited
    - [\*Learn More About Kindle Unlimited.\*](#)

- [Promote Your Book on Kindle Unlimited.](#)
- Gene Doucette, blog post: [Kindle Unlimited is Not Here to Make Friends](#) (Sept. 17, 2017)
- David Gaughran, blog posts: [The Visibility Gambit](#) (Aug. 28, 2017) and [A Tale of Two Marketing Systems](#) (Oct. 23, 2017)

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## Week 9 (March 15): Scholarly Publishing and Open Access

### **Writing Assignment:**

- In *American Geophysical v. Texaco* (week 2), the court emphasized the importance of strong and enforceable copyright protection for the creation and distribution of scholarly research. Steve Shavell suggests abolishing copyright for academic works. Other scholars have taken a middle path, proposing that copyright law should incorporate generous privileges permitting a broad swathe of uses for educational, research, or archival purposes. Is there a problem with current copyright protection for scholarly research, and if so, what solution(s) make the most sense? Write an 800-word paper and upload it to Canvas by 9:00 am on Tuesday, March 13.

### **Reading Assignment:**

1. Mario Biagioli, [Rights or Rewards? Changing Contexts and Definitions of Scientific Authorship](#), in Mario Biagioli & Peter Galison, SCIENTIFIC AUTHORSHIP: CREDIT AND INTELLECTUAL PROPERTY IN SCIENCE (2003)
2. Steven Shavell, [Should Copyright of Academic Work Be Abolished?](#), 2 J. L. Analysis 301(2010) [excerpt]
3. Jim Ottavani, [The Post-Embargo Open-Access Citation Advantage: It Exists \(Probably\), It's Modest \(Usually\), and the Rich Get Richer \(Of Course.\)](#) PLOS One (2016)
5. Jim Ottavani's [Chart](#)
6. [Elsevier v. Sci-Hub](#), 2015 U.S. Dist. LEXIS 147639 (SDNY Oct. 28, 2015) (edited)
7. Researchgate:
  - o <https://www.researchgate.net/>.

- o Lindsay MacKernzie, [Researchgate Backs Down](#), Inside Higher Ed (Oct. 11, 2017)
- 8. Toby Green, [We've Failed: Pirate Black Open Access is Trumping Green and Gold, and We Must Change Our Approach](#), 30 J. Learned Publishing 325 (2017)
- 9. [How Can I Share It .?](#)
- 10. Adam Mossoff & Bhamati Viswanathan, [Open Access Mandates and the Seductively False Promise of "Free,"](#) (2017)

Optional Additional Reading:

- Peter Suber, OPEN ACCESS 1-27, 133-47 (2012)
- Authors Alliance, [Understanding Open Access: When, Why & How to Make Your Work Openly Accessible](#) (2015)
- Steve Shavell's [formal economic model](#)
- Steven Maurer, [Digital Publishing: Three Futures \(and How to Get There\) \(Links to an external site.\)Links to an external site.](#) (2017)

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**Week 10 (March 22): Libraries**

**Writing Assignment:**

- Write a 300 word paper responding to Ariel Katz's article. Upload your paper to Canvas before 9:00 am on Tuesday, March 20.

**Reading Assignment:**

1. AARON PERZANOWSKI & JASON SCHULTZ, THE END OF OWNERSHIP 103-119 (2016)
2. Ariel Katz, [Copyright, Exhaustion, and the Role of Libraries in the Ecosystem of Knowledge](#), 13 I/S 81 (2016)
3. Paul Courant, [The Place of Research Libraries in the Digital Age](#), 13 I/S 245 (2016)
4. Peter Monaghan, [As Libraries Go Digital, Costs Remain Tangible](#), Chronicle of Higher Education, August 13, 2017
5. Abby Smith Rumsey, [The Risk of Digital Oblivion](#), Chronicle of Higher Education, May 4, 2016

6. Visit [LOCKSS](#), [CLOCKSS](#), and [Portico](#)

*Optional:*

- United States Copyright Office, [Section 108 of Title 17: A Discussion Document](#) (September 2017)
- [17 U.S.C. § 108](#)

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## [Week 11 \(March 29\): Mass Digitization and Orphan Works](#)

### **Writing Assignment:**

- As a partner in Google's book digitization project, this university's library received a digital copy of every book in its collection that Google digitized, on the condition that it promise to use the copy only in ways permitted by the copyright law. As you have read, the Court of Appeals for the 2d Circuit ruled that both HathiTrust's creation of a searchable database that displays only page numbers and no text in its search results, and its program for providing access to digital copies for persons with certified print disabilities were permitted by the fair use doctrine in section 107 of the copyright statute. The university library would like to make the full text of as many books as possible widely available. It has therefore invested massive resources and efforts into determining which of the books in its collection are in the public domain, and in making digital copies of those texts available online to the general public. In the course of those efforts, it determined that hundreds of thousands of books in its collection appear to be orphan works. These books are almost certainly protected by copyright, but the library is unable to identify their copyright owners. The library proposes to post online the name of the author, title, publisher, and date of several thousand books that it believes to be orphan works and invite the copyright owners of the books to identify themselves. If, after 90 days, no copyright owner has come forward, the library proposes to make digital copies of those books available to authenticated University of Michigan students, faculty and staff, and to researchers using library computers on library premises. What do you think of this plan? Write a 300 word paper and upload it to Canvas before 9:00 a.m. on Tuesday, March 27.

### Reading Assignment:

1. [2008 testimony of Register of Copyrights Marybeth Peters](#) to the House Judiciary Committee
2. Copyright Office Mass Digitization Pilot Project
  - [Project page](#)
  - [Sept. 9, 2017 letter to Congress](#)
3. [Authors Guild v Hathitrust \(2d Cir. 2014\)](#) and [Authors Guild v. Google \(2d Cir. 2015\)](#) [Edited]
4. Brewster Kahle, [Transforming Our Libraries from Analog to Digital](#), EDUCAUSE March/April 2017
5. David Hansen, Digitizing Orphan Works (2016) [Excerpts]
6. Matt Sag, *Orphan Works as Grist for the Data Mill*, 27 Berkeley Tech. L.J. 1503 (2012) [Excerpt]

### Additional Optional Reading:

- US Copyright Office, [Orphan Works and Mass Digitization: A Report of the Register of Copyrights](#) (2015)
- Lydia Loren, [Abandoning the Orphans: An Open Access Approach to Hostage Works](#), 27 Berkeley Tech. L. J. 1431 (2012)
- Hal Varian, [Copyright Term Extension and Orphan Works](#) (2006)

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## Week 12 (April 5): New Publishing Models

### Writing Assignment:

- If we could replace the current copyright law with a new one optimized for the future of publishing, what would that law look like? Write a 300-word essay answering this question, and upload it to Canvas by 9:00 am on Tuesday, April 3d.

### Reading Assignment:

1. Independent self-publishing:
  - Recreate Coalition: Robert Dhapiro & Siddhartha Aneja, [Unlocking the Gate: America's New Creative](#)

[Economy](#) (2018) (Read pages 1-21, skim pages 73-82, and glance at pages 89-92)

2. Sector-specific Innovation:

A. News Publishing:

- Farhad Manjoo, A Crazy Idea for Funding Local News: Charge People for it, NY Times, Feb. 7, 2018, <https://www.nytimes.com/2018/02/07/technology/funding-local-news-charge-people-money.html>
- [Google News Initiative](#)

B. Fiction Publishing: Choose one of the following four new models to explore –

1. JA Konrath, [Stop A Murder](#) (Optional: Read Konrath's explanation: Interactive eBooks? Almost)
2. [Wattpad](#)
3. Chat fiction apps: (e.g., [Yarn](#); [Hooked](#); [Tap](#))
4. [Bookbub](#) or [NetGalley](#)

C. Scholarly Publishing:

- Carolyn Walters James Hilton, A Study of Direct Author Subvention for Publishing Humanities Books at Two Universities A Report to the Andrew W. Mellon Foundation by Indiana University and University of Michigan, <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/113671/IU%20Michigan%20White%20Paper%2009-15-2015.pdf> 1-25 (2015) (Read both parts 1 & 2)

D. Textbook Publishing:

- Cengage Unlimited: <https://www.cengage.com/unlimited>
- Wolters-Kluwer [Law Class Feedback](#) (Review the sample torts quiz and the "flexible pricing options")

E. Libraries: Controlled Digital Lending:

- Michele Wu, [Piece By Piece Review of Digitize and Lend Projects](#) (2017),
- Open Libraries: <http://openlibraries.online/>

- Internet Archive Blog Post: [Syncing Catalogs with thousands of libraries through OCLC](#) (Oct. 2017)
- Internet Archive Blog post: [Digital Books on Archive.org](#) (Jan. 2018)
- Chris Meadows, [The Internet Archive's Open Library Project Violates the Copyright Law](#), The Authors Guild Warns, Teleread (12/19/2017)
- The Authors Guild, [An Update on Open Library](#) (Jan. 18, 2018)

3. Proposed New Laws:

- A. Small claims adjudication: [The CASE Act \(HR 3945\)](#)  
 (Optional: Read one or both explanations  
 at <http://illusionofmore.com/copyright-small-claims-a-solution-for-many-creators/> and  
<https://www.copyright.gov/docs/smallclaims/>)
- B. News publishers antitrust exemption: Journalism Competition and Preservation Act (HR 5190)  
 (Optional: Read this "fact sheet:"  
<https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/JournalismCompetitionPreservationFactSheet.pdf>  
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Week 13 (April 12): [Final Projects](#)