

COPYRIGHT AND NEW TECHNOLOGIES

Spring 2020

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BASIC INFORMATION and SYLLABUS – version 2.0

BASIC INFORMATION

Class hours:
Tuesday, 3:20 – 5:20pm

Classroom:
Burns 240

Class Schedule:

We will not have class on Tuesday, 24 March. I will discuss the best way to make up this time

Course Materials:

Materials are available on-line through the TWEN system in course packs, which will also be available at Graphic Services.

Email/Internet:

Please send any emails on weekdays. If you don't receive a response within 2 days (or sooner), recommend sending the message again.

INTERNET USE DURING CLASS IS STRICTLY FORBIDDEN.

Evaluation:

Grading in the course will be based on a final take home examination. In addition, class participation may be used to adjust grades upward or downward.

Reasonable Accommodations:

Students in need of reasonable accommodations may review the application guidelines and appeals process at <https://my.lls.edu/studentaffairs/disabilityaccommodations>. For additional information, you may contact Student Accessibility Services (SAS) in the Office of Student Affairs at accessibility@lls.edu or 213-736-8151.

Reporting Requirements on Sexual or Interpersonal Misconduct:

As responsible employees, faculty are required to report any case of suspected sexual or interpersonal misconduct and cannot protect student confidentiality. For information about confidential counseling on campus and for general information about consensual relationships, sexual harassment and sexual assault, please review the following information on the [Office of Student Affairs webpage: Student-on-Student Sexual Misconduct & Interpersonal Conduct Policy & Protocol; LLS & Community Sexual Assault & Interpersonal Misconduct Resource Contact List; & Project Callisto.](#)

OVERVIEW SYLLABUS

1. Prelude [basics and the non-stop technological challenge]
2. The Pre-Internet Treaty Framework
3. WIPO Copyright Treaties and comparative national implementation
 - A. *The right of making available?*
 - B. *Digital locks and circumvention devices*
4. Third party liability – the initial problem of internet service providers
 - A. *Act I – mainstream ISPs*
 - B. *Act II - the rise and fall of peer-to-peer (P2P) and cyberlockers*
 - C. *Act III – evolving intermediaries, evolving duties*
5. Maintaining and reshaping copyright for the network
 - A. *A “digital first sale” doctrine?*
 - B. *Is hyperlinking a distribution or a public display?*

SYLLABUS - version 1.0

Coursepack #1

1. PRELUDE –

Article I, section 8, clause 8 of the U.S. Constitution

17 U.S.C. §§ 102, 106, and 107

Burrow-Giles Lithographic v. Sarony, 111 U.S. 53 (1884)

Fortnightly Corp. v. United Artists Television, 392 U.S. 390 (1968)

MAI Systems v. Peak Computer 991 F.2d 511, 1993 U.S. LEXIS 7522 (9th Cir., 1993)

Read 17 U.S.C. §§ 117 (with the statutory provisions)

Marobie-FL, Inc. v. National Association of Fire Equipment Distributors, 983 F. Supp. 1167 (E.D. Ill. 1997)

Coursepack #2

2. THE PRE-INTERNET TREATY FRAMEWORK

Article 9, 10, and 11 of the TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY (TRIPS) AGREEMENT, Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994

Read Articles 8-12 of the BERNE CONVENTION ON THE PROTECTION OF LITERARY AND ARTISTIC WORKS, last revised at Paris on July 24, 1971, and amended on September 28, 1979

3. THE WIPO COPYRIGHT TREATIES AND COMPARATIVE NATIONAL IMPLEMENTATION

Read Articles 4-12 of the WIPO Copyright Treaty (WCT), World Intellectual Property Organization [WIPO] (1996)

A. *The right of making available?*

Articles 2-4 from DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 22 MAY 2001 ON THE HARMONISATION OF CERTAIN ASPECTS OF COPYRIGHT AND RELATED RIGHTS IN THE INFORMATION SOCIETY

Excerpt from SENATE REPORT, 105-190, REPORT OF THE SENATE JUDICIARY COMMITTEE ON S. 2037, The Digital Millennium Copyright Act, May 6, 1998 [3-3 SenateReport105-190.doc]

Atlantic Recording Corporation v. Howell, 554 F.Supp.2d 976 (D. Arizona, April 29, 2008)

Peter S. Menell, *Exhuming Copyright's Lost Ark to Interpret the Distribution Right*, Media Institute, IP Perspectives, 20 October 2010, available at <http://www.mediainstitute.org/IPI/2010/102110.php>

Diversey v. Shmedly, 738 F.3d 1196 (10th Cir. 2013)

B. *Digital locks and circumvention devices*

Portions of 17 U.S.C. § 1201 and § 1202 – from the U.S. DIGITAL MILLENNIUM COPYRIGHT ACT (1998)

Universal City Studios v. Reimerdes, 111 F. Supp. 2d 294, 2000 U.S. Dist. LEXIS 11696 (S.D.N.Y. 2000)

Lexmark International v. Static Control Components, 387 F.3d 522; 2004 U.S. App. LEXIS 22250 (Sixth Cir. 2004)

Article 6 from DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 22 MAY 2001 ON THE HARMONISATION OF CERTAIN ASPECTS OF COPYRIGHT AND RELATED RIGHTS IN THE INFORMATION SOCIETY

Excerpts from Norwegian Copyright Act

Excerpt from Justin Hughes, *Motion Pictures, Markets, and Copylocks*, 23 GEORGE MASON L. REV. 941 (2016)

4. Third party liability – the initial problem of internet service providers

Coursepack #3

A. Act I – mainstream ISPs

Selected provisions of U.S. DIGITAL MILLENNIUM COPYRIGHT ACT (1998), 17 U.S.C. § 512.

Articles 12 - 15 of the DIRECTIVE 2000/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 8 JUNE 2000 ON CERTAIN LEGAL ASPECTS OF INFORMATION SOCIETY SERVICES, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

Rules of Supreme People's Court of China on Several Issues Concerning the Application of Law in Adjudication of Civil Disputes Related to Infringement of Right of Communication over Information Networks, *Approved at No. 1561 Meeting of the Supreme People's Court Adjudication Commission held on November 26, 2012*. Fashi (2012) No. 20

Sections 252A, et seq. ["Transmission, routing and provision of connections"] of the SINGAPORE COPYRIGHT ACT (Original Enactment: Act 2 of 1987, revised edition 21 January 2006)

Google "Transparency Report" as of 14 January 2020 (current page available at <https://transparencyreport.google.com/copyright/overview>)

Microsoft Content Removal Requests Report as of 14 January 2020 (current page available at <https://www.microsoft.com/en-us/corporate-responsibility/content-removal-requests-report>)

Executive summary from URBAN, KARANGANIS, AND SCHOFIELD, NOTICE AND TAKEDOWN IN EVERYDAY PRACTICE (Version 2, update March 2017)

BMG Rights Management v. Cox Communications, 881 F.3d 293 (4th Cir. 2018)

Coursepack #4

B. *Act II - the rise and fall of peer-to-peer (P2P) and cyberlockers*

A&M Records v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001)

The Rogue File Case, Heisei 14 (Wa) 4249, Tokyo District Court Decision of January 29, 2003 [summary translation by Shinji Niioka and Justin Hughes]

The Winny Case, Heisei 15 (Wa) 2018, Kyoto District Court Decision of November 30, 2004

Universal Music Australia Pty Ltd v Sharman License Holdings Ltd [2005] FCA 1242, Federal Court of Australia Decision of 5 September 2005. Summary from Judge Wilcox.

MGM v. Grokster, United States Supreme Court, 545 U.S. 913 (2005) (27 June 2005)

C. *Act III – evolving intermediaries, evolving duties?*

ABC v. Aereo, U.S. Supreme Court (25 June 2014)

Articles 17, 13, and 1 (excerpt) from DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 April 2019 on copyright and related rights in the Digital Single Market (“the Digital Single Market Directive”)

Coursepack #5

5. Continuously reshaping copyright for the network

A. *A “digital first sale” doctrine?*

Relevant provisions of U.S. and EU law

UsedSoft GmbH v. Oracle International Corp., Court of Justice of the European Union, Case C-128/11 (3 July 2012)

Capitol Records v. Redigi, Inc., 934 F. Supp. 2d P30 (S.D.N.Y.) followed by 910 F.3d 649 (2d Cir. 2018)

Nederlands Uitsgeversbond v. Tom Kabinet Internet, Court of Justice of the European Union, Case C-263/18 (19 December 2019)

Coursepack #6

B. *Is hyperlinking a distribution or a public display?*

Perfect10 v. Amazon, 508 F.3d 1146 (9th Cir. 2007) [“Server test” excerpt]

Goldman v. Breitbart News Network, Case 1:17-cv-03144-KBF, Order and Opinion (S.D.N.Y. 15 February 2018)

Press Release No 92/16, Judgment in Case C-160/15, *GS Media BV v. Sanoma Media Netherlands*, Court of Justice of the European Union, 8 September 2016

GS Media BV v. Sanoma Media Netherlands, Court of Justice of the European Union, Case C-160/15 (8 September 2016)

END OF SPRING 2020 SYLLABUS – VERSION 2
