

COPYRIGHT AND NEW TECHNOLOGIES

Spring 2013

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BASIC INFORMATION and SYLLABUS – version 1.1

BASIC INFORMATION

Class hours: Tuesdays, 1:10 – 3:10pm

Classroom: FH236

There will be NO classes on 19 February. A make-up classes has been scheduled for Thursday, 25 April 1:10-3:10pm in our regular room.

Course Materials:

Materials are available on-line **through the TWEN system** in two forms as .pdf files.

Evaluation and Class Format:

Grading in the course will be based on a take-home examination or paper – which we will discuss on the first day of class. In addition, class participation will be used to adjust grades upward or downward. Students are expected to be prepared each class to participate based on class readings. Internet use during class is strictly FORBIDDEN.

SYLLABUS

META-SYLLABUS

- * Prelude [how far can copyright go?]
- 1. Translating 19th Century Copyright Law into 21st Century Problems
- 2. The Initial Treaty Framework
- 3. **WIPO Copyright Treaties and comparative national implementation**
 - A. United States, Singaporean, and Australian implementation – digital locks and circumvention devices
 - B. European implementation and comparative safeguard mechanisms
- 3. **The initial problem of mainstream internet service providers**
 - A. United States

- B. European Union
 - C. Japan and Germany – a comparison
 - D. China
 - E. Singapore
4. **P2P internet service providers – issues of liability and responsibility**
5. **Revisiting mainstream ISP responsibility in light of P2P reasoning – Graduated response and site blocking**
- A. Rethinking responsibility generally?
 - B. Graduated response systems – France, Korea, New Zealand, US
 - C. Site blocking – European decisions and SOPA/PIPA
6. **Reshaping copyright for the network**
- A. Google Books and the problem of orphan works
 - B. Pandora, SoundExchange, and levy systems – more or less needed?

EXPANDED SYLLABUS
name in brackets is .doc or .pdf file name

Coursepack #1

0. PRELUDE

Lancôme v. Kecofa, et al., Decision of the Court of Appeals, Den Bosch, The Netherlands, 8 June 2004 [Lancome.pdf]

1. TRANSLATING 19TH CENTURY COPYRIGHT LAW INTO 21ST CENTURY PROBLEMS –

Fortnightly Corp. v. United Artists Television, 392 U.S. 390 (1968) [Fornightly2.doc]

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

Cartoon Network v. Cable News Network, 536 F.3d 121 (2d Cir 2008) [Cartoon 536_F3_121.pdf]

Marobie-FL, Inc. v. National Association of Fire Equipment Distributors, 983 F. Supp. 1167 (E.D. Ill. 1997) [MAROBIE2.doc]

2. THE INITIAL TREATY FRAMEWORK

Excerpts from the TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY (TRIPS) AGREEMENT, Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994 [2-1 TRIPSexcerpt.doc], also available at http://www.wto.org/english/docs_e/legal_e/27-trips.wpf

BERNE CONVENTION ON THE PROTECTION OF LITERARY AND ARTISTIC WORKS, Articles 1-21, last revised at Paris on July 24, 1971, and amended on September 28, 1979, [2-2 BERNE.pdf] also available at http://www.wipo.int/treaties/en/ip/berne/pdf/trtdocs_wo001.pdf [Skim these provisions – perhaps reviewing the “titles” of each article - to see how the substantive components of the Berne Convention were “integrated” into the WTO system by TRIPS Article 9.]

17 USC 106 (referring to appropriate definitions in SECTION 101 as needed) [2-3 Portions of Title 17.doc]

3. THE WIPO COPYRIGHT TREATIES AND COMPARATIVE NATIONAL IMPLEMENTATION

WIPO Copyright Treaty (WCT), World Intellectual Property Organization [WIPO] (1996) [3-1 WCTtext.pdf] available at <http://www.wipo.int/treaties/ip/wct/>

DRAFT LAW OF COPYRIGHT AND RELATED RIGHTS FOR LAO PEOPLE’S DEMOCRATIC REPUBLIC, sometime 2004 [preparatory text based on consultations with WIPO officials; NOT for distribution outside our class] [3-2 LaoCopyright.pdf]
[Read ONLY Articles 3-9 (pp. 8-13), Articles 21-22 (pp. 20-22), and Art. 29 (pp. 28-28)]

A slightly unresolved problem . . .

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, CV-06-02076-PHX-NVW (D. Arizona, April 29, 2008) [3-4 Atlantic v Howell, 2008 EDITED.doc]

A. *United States, Singaporean, and Australian implementation – digital locks and circumvention devices*

Selected provisions of U.S. DIGITAL MILLENNIUM COPYRIGHT ACT (1998), 17 U.S.C. Read § 1201 (a) through (j) and § 1202 [3-5 17USC 1201-1205.pdf]

Universal City Studios v. Reimerdes, 111 F. Supp. 2d 294, 2000 U.S. Dist. LEXIS 11696 (S.D.N.Y. 2000) [3-6 Universal v. Remeirdes02.doc]

Lexmark International v. Static Control Components, 387 F.3d 522; 2004 U.S. App. LEXIS 22250 (Sixth Cir. 2004) [3-7 Lexmark02.doc]

Sony Computer Entertainment v. Eddy Stevens, Federal Court of Australia, [2003] FCAFC 157, 30 July 2003 [excerpts – summary and opinions of Judge French, Lindgren, and Finkelstein] [3-8 EddyStevens2.doc]

Excerpts from SINGAPOREAN COPYRIGHT ACT in response to U.S. – Singapore “FTA” (Part XIII A, Circumvention of Technological Measures . Read with a mind to comparing to the parallel provisions of the DMCA and EU Copyright Directive) [3-9 2005CopyrightAct – PART XIII A.doc], available at <http://statutes.agc.gov.sg>

Coursepack #4

B. *European implementation and comparative safeguard mechanisms*

EUROPEAN UNION COPYRIGHT DIRECTIVE, Directive 2001/29/EC of the European Parliament and of the Council, 22 May 2001 [2001CopyrightDirective.pdf] [Skim “whereas” provisions and read directive articles 2-4 and 6 carefully; skip Article 5, which we study later].

Excerpts from Norwegian Copyright Act [Norway TPM excerpts.doc]

Excerpts from Greek Copyright Law, Section IX (Legal Protection), as amended 2007 [Greek Copyright Law – TPM.doc]

Excerpts from the French Intellectual Property Code, passed in 2006 pursuant to “DADVSI,” Law no. 2006-961 of 1 August 2006 on Copyright and Neighboring Rights in the Information Society [DADVSI provisions in English.doc]

It might be valuable to review 17 U.S.C. § 1201 (a) (1)(B – E) for comparison

3. THE INITIAL PROBLEM OF MAINSTREAM INTERNET SERVICE PROVIDERS

A. *United States*

Selected provisions of U.S. DIGITAL MILLENNIUM COPYRIGHT ACT (1998), 17 U.S.C. § 512.
[d-Section512.doc]

Online Policy Group, et al. v. Diebold Election Systems, 337 F. Supp. 2d 1195 (N.D. Cal. 2004)
[diebold2.doc]

B. *European Union*

EU DIRECTIVE ON ELECTRONIC COMMERCE, Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 [review articles 12 - 15 reproduced here and “whereas” clauses that you think are relevant] [EUDirectiveonECommerce.pdf]

THE MULTATULI PROJECT, ISP NOTICE & TAKE DOWN, Lecture by Sjoera Nas, *Bits of Freedom*, SANE, 1 October 2004 [MULTILAT-Notice&TakeDown.pdf]

C. *Japan*

INTERIM REPORT BY COPYRIGHT COUNCIL OF JAPAN (FIRST SUBGROUP) REGARDING ISP LIABILITY, December 2000
(detailing two cases of defamation and ISP liability in Japanese courts, with additional story from *Yomiuri Shimbun*) [JapanCopyrightCouncil.doc]

JAPAN PROVIDER LIABILITY LIMITATION ACT, passed November 30, 2001 and effective May 27, 2002 [the version here is a translation of the “draft,” but seems to reflect the final provisions] [draftJapanPLLA.doc]

D. *China*

INTERPRETATION BY THE SUPREME PEOPLE’S COURT (CHINA) OF SEVERAL ISSUES RELATING TO ADJUDICATION OF AND APPLICATION OF LAW TO CASES OF COPYRIGHT DISPUTES ON COMPUTER NETWORK,
Adopted at the 1144th meeting of the Adjudication Commission of the Supreme People’s Court, December 21, 2000; Amended at the 1302nd Meeting of the Commission on 23 December 2003 and Entering into Force on 7 January 2004. [CHINA-2004Intrepretation.doc] also available at www.cpahk ltd.com/Archives

Coursepack #5

4. P2P internet service providers – issues of liability and responsibility

A&M Records v. Napster, Inc., 239 F.3d 1004, 2001 U.S. App. LEXIS 5446, 2001 Cal. Daily Op. Service 1255, 2001 D.A.R. 1611, Copy. L. Rep. (CCH) P28200, 57 U.S.P.Q.2d (BNA) 1729 (9th Cir. Cal. 2001) [4-1 Napster 9th edited.doc]

MGM v. Grokster, United States Supreme Court, 545 U.S. 913 (2005) (June 27, 2005) [4-3 GROKSTER-SCopinion.pdf]

The Rogue File Case, Heisei 14 (Wa) 4249, Tokyo District Court Decision of January 29, 2003 [4-4 The Rogue File Case – FINAL.doc is a summary translation by Shinji Niioka and Justin Hughes]

The Winny Case, Heisei 15 (Wa) 2018, Kyoto District Court Decision of November 30, 2004 [4-5 Winny Case.doc].

Universal Music Australia Pty Ltd v Sharman License Holdings Ltd [2005] FCA 1242, Federal Court of Australia Decision of 5 September 2005. [KAZAAdecision02.doc]
(Although I have massively edited this 520+ paragraph opinion, there are large parts of it you will want to skim.)

Coursepack #6

5. Revisiting mainstream ISP responsibility in light of P2P reasoning – Graduated response and site blocking

A. Rethinking responsibility generally?

Andrew Orłowski, *China's nonstop music machine*, THE REGISTER, 13 September 2008 [Baidu – the nonstop music machine.pdf]

Perfect 10 v. Amazon, 487 F.3d 701 (9th Cir. 2007). This edit of the case only covers the contributory liability and DMCA section 512 analysis [PERFECT 10 – contributory edit.doc]

B. Graduated response systems – France, Korea, New Zealand, US

[MORE TO COME]

C. Site blocking – European decisions and SOPA/PIPA

SABAM v. S.A. Scarlet, District Court of Brussels, No. 04/8975/A, Decision of 29 June 2007, published in CAELJ Translation Series #001 (Mady, Bourrouilhou, & Hughes, trans.), 25 Cardozo Arts & Ent. L. J. 1279 (2008) [FM_JB_JH_translation_FINAL.doc]

[MORE TO COME]

6. Reshaping copyright for the network

A. Google Books and the problem of orphan works

Article 67 of the *Japan Copyright Act* [translation from Copyright Research and Information Center, Tokyo] [Japan Copyright Article 67.doc]

Section 77 of the *Canadian Copyright Act* (“Owners Who Cannot Be Located”) [Canadian Copyright Section 77.doc]

Three sample decisions of the Copyright Board of Canada on Section 77 applications [2005-UO-TI-26.pdf, 2005-UO-TI-36.pdf, and 2006-UO-TI-29.pdf]

The “Orphan Works Act of 2006” introduced in the United States House of Representatives, May 22, 2006 [Orphan Works Act of 2006.pdf], also available at <http://thomas.loc.gov/cgi-bin/query/C?c109:./temp/-c1090q6wU3>

[MORE TO COME]

END OF SPRING 2013 SYLLABUS – VERSION 2
