

COPYRIGHT AND NEW TECHNOLOGIES
Spring 2015

Professor Justin Hughes
213-736-1476
Justin@justinhughes.net

BASIC INFORMATION and SYLLABUS – version 1.0

BASIC INFORMATION

Class hours: Mondays, 1:10 – 3:10pm

Classroom: Cassasa 402

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), I 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.

OVERVIEW SYLLABUS

1. Prelude [basics and the non-stop technological challenge]
2. Adapting Copyright Law into 20th and 21st Century Facts
3. The Pre-Internet Treaty Framework
4. WIPO Copyright Treaties and comparative national implementation
 - A. *The right of making available?*
 - B. *Digital locks and circumvention devices*
5. The initial problem of mainstream internet service providers
 - A. *United States*
 - B. *European Union*
 - C. *Japan*
 - D. *China*
6. P2P internet service providers – issues of liability and responsibility
7. Maintaining and reshaping copyright for the network
 - A. Technological challenges to the idea of “public performance”
 - B. Digital libraries, orphan works, and extended collective licensing
 - C. Continuous flux in the music industry

Materials in black is finalized and in course packs; material in blue is still in development.

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)

2. ADAPTING COPYRIGHT LAW TO 20TH AND 21ST CENTURY FACTS

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

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

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

Coursepack #2

3. 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

4. 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

Excerpts from Greek Copyright Law, Section IX (Legal Protection), as amended 2007

[*Not in course pack*]

Excerpt from Federal Register Notice: Librarian of Congress' Determinations on Exemptions to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 37 CFR Part 201, 77/208 Federal Register, Friday, October 26, 2012, at 65260.

Coursepack #3

5. 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*

Articles 12 - 15 of the EU DIRECTIVE ON ELECTRONIC COMMERCE, Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000

THE MULTATULI PROJECT, ISP NOTICE & TAKE DOWN, Lecture by Sjoera Nas, *Bits of Freedom*,

SANE, 1 October 2004 [MULTILAT-Notice&TakeDown.pdf]

C. *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-2004Intpretation.doc] also available at www.cpahklt.com/Archives

Coursepack #4

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

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

In re Aimster Copyright Litigation, 334 F.3d 643 (7th Cir. 2004)

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. [KAZAAdecision02.doc]
(Although I have massively edited this 520+ paragraph opinion, there are large parts of it you will want to skim.)

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

Coursepack #5

7. Maintaining and reshaping copyright for the network

A. Technological challenges to the idea of “public performance”

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

B. Digital libraries, orphan works, and extended collective licensing

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]

Copyright Board of Canada Letter Determination 2006-UO/TI-29 , Ottawa, 13 September 2006

The “Orphan Works Act of 2006” introduced in the United States House of Representatives, May 22, 2006

The Authors’ Guild v. Google, Inc., Second Circuit Court of Appeals, 2015 WL 6079426 (15 October 2015)

Henry Olsson, Swedish Ministry of Justice, *The Extended Collective License as Applied in the Nordic Countries*, Presentation at Kopinor 25th Anniversary International Symposium, Oslo, 20 May 2005.

United States Copyright Office, Notice of Inquiry, Mass Digitization Pilot Program – Request for Comments, FEDERAL REGISTER, Vol. 80, No. 110, 9 June 2015

Coursepack #6

C. Understanding the state of digital music

BERKLEE INSTITUTE OF CREATIVE ENTREPRENEURSHIP, FAIR MUSIC: TRANSPARENCY AND PAYMENT FLOWS IN THE MUSIC INDUSTRY (September 2015), available for download at <http://www.rethink-music.com/download-page>

END OF SPRING 2015 SYLLABUS – VERSION 3
