

Loyola Law School  
**COPYRIGHT LAW**  
Fall 2019 / Syllabus **VERSION 2**

Professor Justin Hughes

**BASIC INFORMATION and SYLLABUS – version 01**

INTERNET USE DURING CLASS IS STRICTLY FORBIDDEN

**Class room:** Hall of the '80s [NO regular student seating in uppermost two rows of seats]

**Class times:** Mondays and Wednesday, 3:20-4:50pm

- + As part of the regular LLS schedule, we will NOT have class on **Monday, 2 September** for Labor Day and **Wednesday, 9 October** for Yom Kippur.
- + We will NOT have class on **Monday, 26 August**; we may also lose a class on Monday, 4 November.
- + We WILL have a make-up class on at least one of these three dates: **Monday, 7 October** [open class day]; **Tuesday, 8 October** [open class day]; and **Friday, 22 November** [Flex Day]. I will do my best to make sure the make-up class is at the same time and same room as our normal meetings.

**Materials:**

ROBERT A. GORMAN, JANE C. GINSBURG, AND R. ANTHONY REESE, COPYRIGHT (9<sup>th</sup> edition, Foundation Press, 2017) and *additional supplemental materials* on TWEN, particularly The current Copyright Act, Title 17 United States Code, *available on TWEN course page as <Copyright Act>*. [This case book can be purchased or rented.]

In the case book, do **not** read authors' "PROBLEMS" and "NOTES AND QUESTIONS" in assigned pages *unless specifically directed in this syllabus*.

**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.

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As part of class participation, absolutely NO internet use is permitted in the class. *Students found to be using the internet during class may be referred to the Academic Standing Committee and/or Professor Hughes will lower of the student's final grade significantly.*

## OVERVIEW

For most of the twentieth century, American copyright law was the provenance of a handful of experts in mid-sized firms in New York, with other hubs of activity in Los Angeles and Washington. That all changed at the turn of the century as copyright became (and remains) a hotly contested area of law -- in the courtroom, in Congress, and in international trade relations.

Copyright law is also fascinating because it offers theoretical issues worthy of a philosophy class. How can we draw the distinction between an "idea" and its "expression"? What is "originality"? What's the correct -- or just or fair -- allocation of rights between today's artists and tomorrow's creators? Between creators and consumers?

This course provides the basics of American copyright law exploring the various kinds of works copyright protects and why; the different rights under copyright; exceptions to those rights, including the fair use doctrine; copyright ownership issues; and how liability arises. Although the practice of copyright law is increasingly international and high tech, this introductory course focuses on the statutory and case law that form the backbone of American copyright.

## SYLLABUS

version 1.1 – 12 August 2019

Unless noted, all page assignments are from the casebook. Do NOT read “Questions” in the case book unless specifically instructed:

### I. INTRODUCTION – AN OVERVIEW OF THE NORMS, JUSTIFICATION, AND HISTORY OF COPYRIGHT

1 - 10	[up to “7. International Copyright . . .”]
13 – 30	[“B. General Principles” up to <i>Burrow-Giles Lithographic</i> case]

During the first two weeks, please *review* the following provisions of the current Copyright Act: 17 USC §§ 102, 105 – 107, 201 – 202, 301 – 302.

*You may wish to review § 101 for definitions relevant to other §§ you are reading here.*

### II. RIGHTS OVER WHAT? – THE SCOPE OF COPYRIGHT

- A. THE REQUIREMENTS OF ORIGINALITY AND FIXATION IN A 'WORK'
  - 85 [§ 102 only]
  - 101 – 111 [“b. ORIGINALITY” to “Questions”]
  - 36 – 39 [*Bleistein v. Donaldson Lithographic Co.* case]
  - 187 – 212 [“D. Derivative Works” to “Questions” (on 212)]
  
- B. THE REQUIREMENT OF ORIGINALITY AND THE PROTECTION OF PHOTOGRAPHS
  - 30 – 36 [*Burrow-Giles Lithographic Co.* case]
  - TWEN: *Leigh v. Warner Bros*, 10 F. Supp. 2d 1371 (S.D. Ga. 1998)

- C. COMPUTER PROGRAMS  
214 – 228 [up to *Lotus v. Borland*]
- D. EXPRESSIONS, NOT IDEAS  
120 - 134 [“B. THE ‘IDEA/EXPRESSION DICHOTOMY” up to “Questions”]  
228 – 337 [*Lotus v. Borland* through *Mitel*, up to “Questions”]
- E. EXPRESSIONS, NOT FACTS  
COMPILATIONS, NOT FACTS;  
JUDGMENTS, NOT FACTS  
135 - 159 [“C. Facts and Compilations” *through* Question #2 on page 158-159]  
162 - 169 [*CCC Information Systems*]
- F. PICTORIAL, AND SCULPTURAL WORKS,  
"USEFUL" ITEMS  
261 – 269 [“2. THE PROBLEM OF APPLIED ART” to “c. What is a ‘A Useful Article?’”]  
TWN: *Star Athletica v. Varsity Brands* (Supreme Court, 2017)
- G. CHARACTERS  
311 – 323 [to *Klinger v. Conan Doyle Estate*]

### III. THE RIGHTS OF COPYRIGHT AND THE PROBLEM OF SAMENESS

- A. THE RIGHT TO MAKE COPIES  
611 - 614 [to “FIXATION ON DIGITAL MEDIA”]  
TWN: *Arnstein v. Porter*, 154 F.2d 464 (2d Cir. 1946), *cert. denied* 330 U.S. 851 (1947)  
633 – 635 [*Bright Tunes Music v. Harrisongs*]  
643 – 675 [“CIRCUMSTANTIAL PROOF OF COPYING” up to “Questions”]  
693 – 704 [*Computer Associates v. Altai*]  
715 – 722 [*Steinberg v. Columbia Pictures*]  
614 – 620 [“Fixation in Digital Media” to *Cartoon Network*]
- B. MUSICAL COMPOSITIONS AND PHONORECORDS  
732 - 746 [“The Right to Make Phonorecords” to “A Statutory Exemption”]  
TWN: *reading to be added on 2018 Music Modernization Act*
- C. DERIVATIVE WORKS  
757 - 760 [*Horgan v. Macmillan* and “Question #1,” stop at *Question 2*]  
766 - 769 [*Micro Star v. Formgen, Inc.*]
- D. THE RIGHT OF DISTRIBUTION AND THE "FIRST SALE DOCTRINE"  
811 – 820 [“C. The Right to Distribute Copies” to *Elektra Ent. Group v. Barker*]  
826-835 [§ 109 to *UMG Recordings v. Augusto*]  
840 – 847 [“A ‘DIGITAL FIRST SALE DOCTRINE’? to “Questions”]

- E. THE RIGHTS OF PUBLIC PERFORMANCE AND OF PUBLIC DISPLAY
  - 873 - 876 [to “Question”]
  - 880 [definition of “public”]
  - 886- 894 [ABC v. Aereo]
  
- IV. FAIR USE AND OTHER EXCEPTIONS
  - 949 - 965 [through *Campbell v. Acuff-Rose*]
  - 1000 - 1012 [*Harper & Row v. Nation Enterprises*]
  - 1112 - 1119 [*Sony v. Universal* (fair use excerpt)]
  - 1125 - 1135 [*A & M Records v. Napster* (fair use excerpt)]
  - 1088 - 1101 [*Authors’ Guild v. Google*]
  
- V. THIRD PARTY LIABILITY -- CONTRIBUTORY AND VICARIOUS
  - 1143 - 1147 [*Fonovisa v. Cherry Auction*]
  - 1149 - 1172 [*Sony Corp. v. Universal* until concurrences in *Grokster*]
  
- VI. AUTHORS, OWNERS, AND DURATION
  - A. AUTHORSHIP, OWNERSHIP, AND TRANSFER
    - 361 - 365 [“OWNERSHIP” until *Community for Creative Non-Violence v. Reid*]
    - 387 - 401 [*Thomson v. Larson* to “Questions”]
    - 403 - 409 [“B. TRANSFER OF COPYRIGHT OWNERSHIP” through *Effects Associates*]
  
  - B. DURATION OF COPYRIGHT AND “RECAPTURE”
    - TWEN: *Comic book version of Copyright Terms* – from Aoki, Boyle, and Jenkins, “Bound By Law,” pages 10-11, based on a chart by Lolly Gasaway
    - 530 -532 [“2. COPYRIGHT DURATION . . .” up to Questions]
    - 568 - 569 [transition chart]

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 ##### END OF SYLLABUS version 2 #####