

Loyola Law School
COPYRIGHT LAW

Fall 2021 / **Syllabus VERSION 2.0**

Professor Justin Hughes

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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?

There is also a very practical reason for a Loyola student to take Copyright Law (as well as Trademark Law). While the Central District of California handles about 4% of the country's overall litigation, it is the venue for about 13% of the United States' patent and copyright litigations and for over 18% of the copyright litigation that are not cookie-cutter enforcement actions. While the Ninth Circuit handles roughly 13% of the country's appellate litigation, the Ninth Circuit is home to over 25% of all copyright appeals. These stats vary year to year, but the point is straightforward: law firms and enterprises in southern California know that they will need to staff copyright and trademark expertise.

This course provides the basics of American copyright law by exploring the various kinds of works copyright protects; the different rights under copyright; exceptions to those rights, including the fair use doctrine; copyright ownership issues; and how secondary liability arises. Although 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.

This syllabus is premised on Loyola Law School resuming in-person, in-class sessions in the fall semester; syllabus will be revised to reflect any significant developments.

BASIC INFORMATION

This syllabus is premised on Loyola Law School resuming in-person, in-class sessions in the fall semester; syllabus will be revised to reflect any significant developments.

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

All times listed for this class are in Pacific Standard/Daylight Time (PST/PDT).

We will probably NOT have classes on **Monday, 13 September**, and **Wednesday, 29 September**.

Students should schedule and plan to attend Copyright Law class at the regularly scheduled time on **Monday, 4 October** [LLS Flex Day], **Friday, 19 November** [LLS Flex Day], and **Tuesday, 23 November** [LLS Flex Day]. These will be used for needed make-up classes and/or a review session. Access to recordings of make-up classes will not be made available to students without compelling justification.

Class room for in-person meetings: Donovan Hall

Required Materials:

[1] ROBERT A. GORMAN, JANE C. GINSBURG, AND R. ANTHONY REESE, COPYRIGHT (9th edition, Foundation Press, 2017).

- + The case book can be purchased or rented.
- + It is very important that a student have a printed, PAPER version of the case book.
- + In the case book, authors' "PROBLEMS" and "NOTES AND QUESTIONS" in assigned pages are NOT required reading *unless specifically directed in this syllabus*. Of course, you're welcome to read any additional materials in the case book that are not assigned, including problems and questions.

[2] Additional supplemental materials on **Brightspace**

- + This includes the current Copyright Act, Title 17 United States Code, *available on Brightspace as <Copyright Act>*. There is NO need to buy the case book supplement.

Attendance:

Section 3.2 of the JD Handbook states, "A student is required to attend classes regularly. A student may be withdrawn, and/or excluded from an examination, and given a failing grade in any course in which the student has not maintained a satisfactory attendance record."

Course routine:

Each student is responsible to read, understand, and abide by Professor Hughes' "rules of the road" memo [<m-rulesoftheroad.pdf>](#) on Brightspace which describe how the course will be conducted; what you can

expect from Professor Hughes; and what Professor Hughes will expect of you.

Evaluation:

Grading in the course will be based principally on a 24-hour take home examination at the end of the semester.

In addition, class participation may be used to adjust grades upward or downward for a limited number of students. Students are expected to be prepared each class to participate based on class readings.

For in-person class meetings held at the Law School, internet use by students attending in-person classes is strictly FORBIDDEN unless otherwise specific. Students found to be using the internet during class may have their final grade lowered significantly.

Learning outcomes:

Students may wish to review the Learning Outcomes memo <**m-Learning Outcomes** ©> on Brightspace.

Law school-wide notices:

Reasonable Accommodations:

Loyola Law School adheres to a policy of nondiscrimination in its educational programs, admissions policies, financial aid, and other school-related programs on the basis of sex, age, race, color, religious creed, national origin, sexual orientation, disability, marital, parental or veteran status. The Law School complies fully with the provisions of Title IX of the Education Amendments of 1972, Title III of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and related administrative regulations and executive orders promulgated thereunder.

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

Reporting Requirements of Sexual or Interpersonal Misconduct.

Loyola Law School is dedicated to fostering the education of the whole person and strives to provide an environment that encourages the search for truth and freedom of inquiry. The School recognizes the important contribution a diverse community of students, faculty and staff makes towards the advancement of its goals and ideals. The School is committed to providing an environment that is free of discrimination and harassment as defined by federal, state and local law, as well as under this policy. Any violations of this policy will be treated as serious misconduct and result in appropriate disciplinary action up to and including dismissal from the School.

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.

SYLLABUS

version 2.0 - 02 November 2021

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

I. INTRODUCTION – AN OVERVIEW OF THE NORMS, JUSTIFICATION, AND HISTORY OF COPYRIGHT – *please SKIM the following pages:*

- 1 - 5 [up to “3. The First United States Copyright Statute . . .”]
- 13 - 30 [“B. General Principles” up to *Burrow-Giles Lithographic* case]

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]
 - Brightspace** *Leigh v. Warner Bros*, 10 F. Supp. 2d 1371 (S.D. Ga. 1998)

- C. EXPRESSIONS, NOT IDEAS
EXPRESSIONS, NOT PROCESSES
 - 120 - 134 [“B. The Idea/Expression Dichotomy” up to “Questions”]
 - 228 - 237 [*Lotus v. Borland* through *Mitel*, up to “Questions”]

- D. EXPRESSIONS, NOT FACTS
COMPILATIONS, NOT FACTS
JUDGMENTS, NOT FACTS
 - 135 - 159 [“C. Facts and Compilations” *through* Question #2 on page 158]
 - 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?’”]
 - Brightspace** *Star Athletica v. Varsity Brands* (Supreme Court, 2017)

G. CHARACTERS
311 - 329 [to *I. Sound Recordings*]

H. SOUND RECORDINGS
329 - 334 [To *J. Government Works*]

III. INFRINGEMENT OF COPYRIGHT

A. THE RIGHT TO MAKE COPIES §106(1)
611 - 614 [to "FIXATION ON DIGITAL MEDIA"]
Brightspace *Arnstein v. Porter*, 154 F.2d 464 (2d Cir. 1946)
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. THE RIGHT OF DISTRIBUTION - §106(3) - 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"]

C. THE RIGHTS OF PUBLIC PERFORMANCE AND OF PUBLIC DISPLAY, §106(4) AND (5)
873 - 876 [to "Question"]
880 - 894 ["2. 'PUBLIC' PERFORMANCE . . ." through *ABC v. Aereo*]
922 - 927 ["5. THE RIGHT OF PUBLIC DISPLAY" to *Perfect10 v. Amazon*]

D. MUSICAL COMPOSITIONS AND SOUND RECORDINGS
original §115 compulsory license of musical compositions to make sound recordings
732 - 746 ["The Right to Make Phonorecords" to "A Statutory Exemption"]
Brightspace Thinking about (original) §115 -
Excerpts from writings by Tyler Ochoa and Neela Kartha
Traditional public performance of musical compositions
901 - 905 ["3. Performing Rights Societies" through *Ocasek*]
§106(6) public performance of sound recordings (digital audio transmission)
910 - 917 [4. THE DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS]
New 115 compulsory license of musical compositions to digital network uses
Brightspace Excerpt from ROBERT BRAUNEIS & ROGER SCHECHTER, COPYRIGHT
LAW: A CONTEMPORARY APPROACH, 2019 SUPPLEMENT
How valuable are performance rights?
Brightspace Excerpt from Hughes and Merges, *Copyright and Distributive Justice*

IV. FAIR USE AND OTHER EXCEPTIONS

949 - 965	[through <i>Campbell v. Acuff-Rose</i>]
968 - 970	[<i>SunTrust Bank v. Houghton Mifflin Co.</i>]
1000 - 1012	[<i>Harper & Row v. Nation Enterprises</i>]
1112 - 1119	[<i>Sony v. Universal</i> (fair use excerpt)]
1088 - 1101	[<i>Authors' Guild v. Google</i>]
Brightspace	<i>Fox News v. TVEyes</i> (2d. Cir. 2018)
1031-1041	[<i>Sega v. Accolade</i> and <i>Sony v. Connectix</i>]

V. THIRD PARTY LIABILITY ~ CONTRIBUTORY AND VICARIOUS

1143 - 1147	[<i>Fonovisa v. Cherry Auction</i>]
1149 - 1172	[<i>Sony Corp. v. Universal</i> until concurrences in <i>Grokster</i>]

VI. AUTHORS, OWNERS, AND DURATION

A. AUTHORSHIP, OWNERSHIP, AND TRANSFER

361 - 365	["OWNERSHIP" through §§101, 201]
387 - 399	[<i>Thomson v. Larson</i> and squibs on <i>Aalmuhammed</i> and <i>Richlin v. MGM</i>]
403	[§§101, 201, and 204]

B. DURATION OF COPYRIGHT AND "RECAPTURE"

Brightspace:	<i>Comic book version of Copyright Terms</i> - from AOKI, BOYLE, AND JENKINS, <i>BOUND BY LAW</i> , pages 10-11, based on a chart by Lolly Gasaway
530 - 532	["2. COPYRIGHT DURATION . . ." up to Questions]
568 - 569	[transition chart]

XIII. REMEDIES

I will provide a summary discussion of remedies ~ no reading required



For in-person class meetings held at the Law School, **internet use by students attending in-person classes**

is strictly FORBIDDEN unless otherwise specific / *End of syllabus*, version 01