

Loyola Law School
COPYRIGHT LAW
Fall 2015

Basic information, overview, and syllabus
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BASIC INFORMATION

- Time and place:** Mondays and Wednesdays, 3:20 – 4:50pm , DONOVAN HALL
- Make-up classes:** *None scheduled at this time, but we will discuss*
- Materials:**
- + ROBERT A. GORMAN, JANE C. GINSBURG, AND R. ANTHONY REESE, COPYRIGHT (8th edition, Foundation Press, 2011);
 - + The current Copyright Act, Title 17 United States Code, *available on TWEN course page as <Copyright Act>*;
 - + and additional supplemental materials on TWEN, as provided by instructor.
- 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.
- 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 final grade of such a student.*

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 in the past 25 years as copyright has become 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 -- but with real world policy implications. 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 statutes and rich case law that form the backbone of American copyright. Students particularly interested in a focus on copyright and the digital networked environment may want to take *Copyright and New Technologies* which is offered concurrently, fall 2015.

SYLLABUS
version 01 – 12 July 2015

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 - 9 [up to “7. International Copyright . . .”]
- 12 – 28 [“B. General Principles” up to *Burrow-Giles Lithographic* 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’-
 - 76 [§ 102 only]
 - 83-93 [House Report to “Questions”]
 - 34-37 [*Bleistein v. Donaldson Lithographic Co.* case]
 - 164-182 [Derivative Works section to “Questions” (on 183)]

- B. THE REQUIREMENT OF ORIGINALITY AND THE PROTECTION OF PHOTOGRAPHS
 - 28-34 [*Burrow-Giles Lithographic Co.* case]
 - Leigh v. Warner Bros*, 10 F. Supp. 2d 1371 (S.D. Ga. 1998) on TWEN system as LeighWarnerBros.doc

- C. COMPUTER PROGRAMS
 - 184-197 [up to *Lotus v. Borland*]

- D. EXPRESSIONS, NOT IDEAS

- 100-109 [up to “Questions”]
- 197-205 [Lotus v. Borland through Mitel, up to “Questions”]

- E. EXPRESSIONS, NOT FACTS
 COMPILATIONS, NOT FACTS;
 JUDGMENTS, NOT FACTS
 111-131 [to Atari Games Corp.]
 136-144 [CCC Information Systems through NY Mercantile Exchange, Inc.]

- F. PICTORIAL, AND SCULPTURAL WORKS,
 "USEFUL" ITEMS
 221-226 [“The Problem of Applied Art” to “House Report”]
 232-248 [Pivot Point International v. Charlene Prods., up to
 “Questions”]

- G. CHARACTERS
 262-271

III. THE RIGHTS OF COPYRIGHT AND THE PROBLEM OF SAMENESS

- A. THE RIGHT TO MAKE COPIES
 537-539
Arnstein v. Porter, 154 F.2d 464 (2d Cir. 1946), cert. denied 330 U.S. 851 (1947),
 on TWEN system as Arnstein edit.doc
 558-560 [Bright Tunes Music v. Harrisongs]
 567-597 [“Circumstantial Proof of Copying” up to “Questions”]
 606-624 [Computer Associates case up to “Questions”]
 540-545 [“Fixation in Digital Media”]

- B. THE TRADITIONAL SPECIAL NATURE OF MUSIC
 AND PHONORECORDS
 635-647 [“The Right to Make Phonorecords” to “A Statutory Exemption”]

- C. DERIVATIVE WORKS
 655-658 [Horgan v. Macmillan and “Question #1,” stop at Question 2]
 664-667 [Micro Star v. Formgen, Inc.]

- D. THE RIGHT TO DISTRIBUTION COPIES AND
 THE "FIRST SALE DOCTRINE"
 704-711 [up to Elektra Ent. Group v. Barker]
 731-734 [“Digital First Sale Doctrine” to “Questions”]
Capitol Records v. ReDigi, No. 12 Civ. 95 (RJS) (S.D.N.Y. March 31, 2013) on TWEN
 as ReDigi edit.doc

- E. THE RIGHTS OF PUBLIC PERFORMANCE AND OF PUBLIC DISPLAY
 746-758 [to “Questions”]
 766-772 [Ocasek v. Hegglund to “The Digital Performance Right . . .”]
[ABC v. Aereo Inc., U.S. Supreme Court, No. 13-461, Decided 25 June 2014, on TWEN as Aereo edit.doc](#)
 We **MAY** have in-class summary of pages 772-779, but they are not required reading.

IV. FAIR USE

- 805-820 [through *Campbell v. Acuff-Rose*]
 847-859 [*Harper & Row v. Nation Enterprises*]
 870-879 [*Sega Enterprises and Sony v. Connectix*]
 913-929 [*Sony v. Universal; A & M Records v. Napster*]

V. THIRD PARTY LIABILITY -- CONTRIBUTORY AND VICARIOUS

- 935-939 [*Fonovisa v. Cherry Auction*]
 955-979 [*Sony Corp. v. Universal* until concurrences in *Grokster*]

VI. AUTHORS, OWNERS, AND DURATION

A. AUTHORSHIP, OWNERSHIP, AND TRANSFER

- 301-315 [to “Questions”]
 328-339 [*Thomson v. Larson* to *Gaiman* case]
 343-350 [statutory provisions and *Effects Associates* case]

B. DURATION OF COPYRIGHT AND “RECAPTURE”

- Comic book version of Copyright Terms* – from Aoki, Boyle, and Jenkins, “Bound By Law,” pages 10-11, based on a chart by Lolly Gasaway; on TWEN system at [Copyright Term Panel 1.jpg](#) and [Copyright Term Panel 2.jpg](#)
 409-410 [“2. Copyright Duration . . .” up to Questions]
 438-446 [transition chart through *Stewart v. Abend*]

Once again, INTERNET USE DURING CLASS IS STRICTLY FORBIDDEN.

END OF SYLLABUS **version 1**