

Loyola Law School
COPYRIGHT LAW
Fall 2017

Professor Justin Hughes

BASIC INFORMATION and SYLLABUS – version 01

INTERNET USE DURING CLASS IS STRICTLY FORBIDDEN

Class room:

Hall of the '80s

Class hours:

Mondays and Wednesday, 1:30-3:00pm

We will **NOT** have class on **Wednesday, 6 September** and probably **NOT** on **Monday, 23 October** and **Wednesday, 25 October**.

Assume that we **WILL** have make-up classes on **Monday, 9 October** [an “open class” day] as well as **Monday, 27 November** and/or **Tuesday, 28 November** [“flex” days]. I will do everything I can to make sure that the make-up classes are at the same time and in the same room; please reserve these dates on your calendar.

Materials:

ROBERT A. GORMAN, JANE C. GINSBURG, AND R. ANTHONY REESE, COPYRIGHT (8th edition, Foundation Press, 2011) and *additional supplemental materials* on TWEN, particularly The current Copyright Act, Title 17 United States Code, *available on TWEN course page as <Copyright Act>*.

In that case book, do **not** read authors’ “PROBLEMS” and “NOTES AND QUESTIONS” in assigned pages *unless specifically directed in this syllabus*.

NOTE that there are two available editions of this case book: the 8th edition (2011) and the 9th edition (2017). I recommend that you buy the 8th edition – new or used. The LLS book store is stocking the 8th edition. **This syllabus is keyed to the 8th edition, but if a sufficient number of people are using the 9th edition, we will issue a syllabus that has page designations for both the 8th and 9th.**

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 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.

SYLLABUS

version 1.0 - 05 August 2017

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

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 [“C. Facts and Compilations” to *Atari Games Corp.*]
136-144 [*CCC Information Systems*]

F. PICTORIAL, AND SCULPTURAL WORKS,
"USEFUL" ITEMS
221-226 [“The Problem of Applied Art” to “House Report”]
Star Athletica v. Varsity Brands (Supreme Court, 2017) EDIT on TWEN

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 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"
704-705 ["C. The Right to Distribute Copies" to Question]
716 [just § 109]
732-734 ["The Recording Rental . . . 1990" to “Questions”]
Capitol Records v. ReDigi, (S.D.N.Y. 2013) on TWEN
- E. THE RIGHTS OF PUBLIC PERFORMANCE AND OF PUBLIC DISPLAY
746-749 [to “Question”]
753-758 [“2. Public Performance . . .” through *Columbia Pictures v. Aveco*]
766-772 [*Ocasek v. Heggland* to “The Digital Performance Right . . .”]
750-752 [*U.S. v. ASCAP, in re Application of RealNetworks*]
ABC v. Aereo, (Supreme Court, 2014) on TWEN
- 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*]
Authors’ Guild v. Google (2d. Cir. 2016) on TWEN
- 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 [“Ownership” to “Questions”]
328-339 [*Thomson v. Larson* to *Gaiman* case]
343-350 [“B Transfer of Copyright Ownership” through *Effects Associates*]
- 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
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