

Copyright Law

Spring 2011

University of Pittsburgh School of Law

Prof. Madison

The course website is available via Prof. Madison's homepage: <http://madisonian.net/home/>

COURSE INFORMATION

Copyright Law is a three-credit limited enrollment course for upper-level law students, with enrollment limited to 50 students. No prior experience with intellectual property law is required, though students are expected to remember, understand, and apply what they learned in first-year courses in Contracts, Property, and Torts. Review "Course News and Updates" at the course website for additional information and updated assignments.

The official course description is this:

Copyright law deals with legal protection for certain kinds of human "creativity," including creativity expressed in books, music, and computer code. The Copyright Law course will describe the role that copyright law plays – together with other intellectual property law, other non-IP law, and other non-legal institutions – in positioning that creativity as part of a knowledge ecology and the knowledge economy. For authors and publishers, how does copyright law help them make money based on their creative output? For readers and consumers (and next-generation authors), how does copyright law preserve the power to access and use knowledge? And for law students, how do lawyers participate in doing both things, by representing and counseling clients?

The course will describe the constitutional and statutory attributes of copyright law; the rights and remedies that copyright law provides for authors and publishers; constitutional and statutory protection that copyright law provides for the public; and the intersection of American copyright law with other intellectual property law, with state law, and with international law. Students are expected to master the substantive law of copyright, but that mastery is only a preliminary step. The major goal of the course is to teach students how to use the law to advance their clients' interests in creative products. The course does that by requiring students repeatedly to use their professional judgment in a counseling context.

Course Objectives

A fuller description of the goals of the course is this. In Copyright Law, students will:

- Learn some nuts and bolts of American copyright doctrine, including how trademark fits into related schemes in international law and in patent and trademark law. Much of the reading is oriented to nuts and bolts questions. Students are expected to master much of the basics of this material on their own.



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- Learn quite a bit of the theories and policies that underlie copyright law, and many of the practical consequences and questions that face copyright lawyers and their clients. Much of the classroom discussion is oriented to theory and policy and to consequences and questions. The nuts and bolts cover a landscape that is broader than a single semester can cover, and they change all the time. The theory and policy, and the consequences and questions, are more conceptually complex, help integrate the different areas of the law, and are (paradoxically) more durable, and for all of those reasons are more important. Students are expected to come to class prepared to engage in discussions that relate nuts and bolts to theory and policy and then to consequences. It is expected that students will recall and be able to apply the fundamental doctrines and policies of contract law, property law, and tort law.
- Understand law and policy in the context of being a lawyer, that is, in the context of representing clients. Simply knowing law and policy for oneself is not enough. Lawyers (and therefore law students) must be able to situate their knowledge in the context of others' problems. I will rarely ask students to give me the correct answer to a legal question. I will frequently ask students to exercise their judgment in counseling others and advocating on their behalf.
- Write. This is a course in advanced legal writing. Students should expect to have their writing scrutinized and critiqued at the level of the word and the sentence, at the level of the concept and the structure of the argument, and at the level of substantive legal analysis.

Classroom Computer and Wireless Policy

Students are not permitted to use laptop computers or equivalent devices (such as Blackberries, Treos, iPhones, other smartphones, iPads, etc.) in the classroom. Mobile phones and other mobile telecommunications devices should be switched off. If a student device rings in class, then that student will be expected to bring brownies for the entire class during the following class session. If a student answers a device in class, or leaves the classroom to answer the device, then the device may be confiscated by me and returned to the student by the Associate Dean for Academic Affairs.

Class Meeting Time and Place

Class will meet Mondays and Tuesdays from 3:00 p.m. to 4:15 p.m. in Room G12. The room location is subject to change. Check the boards on the Second Floor for the most up-to-date information.

Attendance and preparation

The Law School's attendance policy applies to this course, meaning that students must attend at least 80 percent of class meetings in order to receive course credit.

Students are expected to arrive for class on time. If a student arrives late, I may exclude that student from the classroom.

Students are expected to read assignments in advance of the class meeting for which they are assigned.

Academic Integrity

As in all classes, students enrolling in this course are expected to comply with the University of Pittsburgh's Student Code of Conduct, which may be accessed online at <http://www.studentaffairs.pitt.edu/conduct/code.html>.

Students also are expected to comply with the University of Pittsburgh's and the School of Law's Guidelines on Academic Integrity which are available at <http://www.provost.pitt.edu/info/acguidelinespdf.pdf> and <http://www.law.pitt.edu/students/policies/academicintegrity>, respectively.

Students with Disabilities

It is the policy and practice of the University of Pittsburgh School of Law to comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Commonwealth of Pennsylvania requirements regarding students and applicants with disabilities. Under these laws, no qualified individual with a disability shall be denied access to or participation in services, programs, and activities of the University of Pittsburgh School of Law.

Students who require accommodations because of a physical, learning or other disability must be evaluated by the Office of Disability Resource Services (ODRS). The ODRS will document and verify the student's status and make recommendations for appropriate accommodations to the Associate Dean of Students, Kevin Deasy.

If you have a disability for which you are or may be requesting accommodation, you should contact both the office of the Associate Dean of Students in the Law School (Dean Kevin Deasy; deasy@pitt.edu) and the University Office of Disability Resources and Services ("DRS"), 216 William Pitt Union, (412) 648-7890/(412) 383-7355 (TTY), as early as possible in the semester. DRS will verify your disability and determine reasonable accommodations for this course. The Associate Dean of Students will oversee the implementation of accommodations.

Contacting Prof. Madison

My office hours are on Monday mornings from 10:30 a.m. to 12 noon and at other times by appointment. My office is Room 311. Students should make an appointment via e-mail at madison@pitt.edu or michael.j.madison@gmail.com.

Required Course Materials

- Julie E. Cohen, Lydia Pallas Loren, Ruth Gana Okediji, and Maureen A. O'Rourke, Copyright in a Global Information Economy (Third Edition 2010);



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- Julie E. Cohen, Lydia Pallas Loren, Ruth Gana Okediji, and Maureen A. O'Rourke, Copyright in a Global Information Economy: 2010 Statutory Supplement.

Optional Course Materials

There is a vast secondary literature on copyright law. Here are four of the best sources:

- Benjamin Kaplan, *An Unhurried View of Copyright* (originally published 1967) (a readable and still relevant overview of copyright history and policy)
- Marshall Leaffer, *Understanding Copyright Law* (5th ed. 2010) (an excellent one-volume summary of copyright doctrine)
- Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* (the authoritative multi-volume treatise) (available on the Law Library shelves and via LexisNexis)
- William F. Patry, *Patry on Copyright* (also an authoritative multi-volume treatise) (available on the Law Library shelves and via Westlaw)

In recent years, legal scholars have published several excellent books on the law and policy of copyright. Try:

- Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (2010)
- Jessica Litman, *Digital Copyright* (2006)
- Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* (2d ed. 2003)
- Neil Netanel, *Copyright's Paradox* (2010)
- William Patry, *Moral Panics and the Copyright Wars* (2009)

The optional law review articles listed on the list of Reading and Class Assignments are available online via a TWEN page at Westlaw.

Slides

Slides used in class will be posted afterward on the Course News and Updates page.

Grading

The grade for this course will be based on three short open research memos. The first two memos will each be worth 30% of the final grade. The final memo will be worth 40% of the final grade. The substance and format of the memos, their timing, and their due dates will be discussed in class as the semester progresses.

Memorandum Requirements

Each memorandum will be based on a written problem distributed in class. There will be an opportunity to discuss the problem and ask questions about it after it is distributed. Each problem will be based on the readings and classroom discussions. The problems are designed so that they can be completed without independent research, but these will be open problems; there are no limits on the resources that students may bring to bear on their work.



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Memoranda must be typed or printed using a computer. Unless I tell students otherwise, each memorandum must be not longer than four [4] typewritten or printed pages, double-spaced, with 1" minimum margins on all sides. No footnotes are permitted. Twelve [12] point proportional-width font (such as Times New Roman) must be used. Condensing or expanding the font is unacceptable.

Memoranda will be graded based on form, format, and writing quality as well as on content. The problems are designed so as not to have any single correct or even best solution. Each problem will present a range of issues that the memorandum should identify, analyze, and solve in a creative way.

As is customary for courses that are graded on the basis of students' out of class work product rather than on the basis of final exams, memoranda will not be graded anonymously. Students should include their own names on the first page of their memoranda.

Hard copies of all memos will be required and will be due at the office of Professor Madison's secretary, in Room 314, not later than 4:30 p.m. on their respective due dates or otherwise as specified in a particular assignment (in other words, the memos may be due earlier than 4:30 p.m.). Memos may also be turned in by handing them in person to Professor Madison or to a member of the staff of the Registrar's Office, at the Registrar's window. Electronic (e-mailed) copies are not acceptable. There will be no extensions or exceptions to memo deadlines.

Memoranda that do not conform to the format instructions above, or that are turned in late, are subject to grade reductions. In extreme cases, I may disregard them.

Syllabus Updates and Recent Developments

Course announcements will be posted online from time to time under Course News and Updates. That page has an RSS feed, so that students can follow it in a reader or otherwise without having to check an email box.

Email policy

I am happy to receive substantive questions about copyright law at my email address. In general, my practice is to respond to these questions during class, rather than via email, so that the entire class gets the benefit of the exchange.



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READING AND WRITING ASSIGNMENTS

How to read the Syllabus: Except as noted below, each assignment below corresponds tentatively to one class period, though the amount of material to be covered in class, the order of the assignments, and/or the contents of a particular assignment may be changed by prior announcement. Note, for example, that we will have more class meetings than there are assignments. I will make every effort to incorporate new developments in copyright law into the Syllabus, where appropriate.

The page numbers listed below under “Casebook” refer to Julie E. Cohen, Lydia Pallas Loren, Ruth Gana Okediji, & Maureen A. O’Rourke, *Copyright in a Global Information Economy* (Third Edition 2010). “Softcover Supplement” refers to Julie E. Cohen, Lydia Pallas Loren, Ruth Gana Okediji, & Maureen A. O’Rourke, *Copyright in a Global Information Economy: 2010 Case and Statutory Supplement*.

Within each assignment, the Syllabus notes the principal case(s) covered in the text. Within each assignment, the Syllabus notes the principal case(s) covered in the text.

In addition to the assigned readings, where a case or other material refers to the Copyright Act (Title 17 of the United States Code), you are responsible for locating and reading the section(s) of the Act to which the text refers. If you do not own a copy of the Copyright Act, you can access a free, online version at <http://www4.law.cornell.edu/uscode/17/>.

For several of the units of reading, optional law review articles are included. Some of these are relatively short. Some are quite long. Reading some or all of them will give you a deeper picture of the current state of copyright law and policy than you will get by focusing on appellate cases and the statute alone. All of the articles are available via the University of Pittsburgh — Copyright Law course page on TWEN, at Westlaw.

I. Introduction

- **Class 1: Copyright’s Institutional Settings: Google Book Search, and the Music Industry**

Read the following three articles from the New York Review of Books written by Professor Robert Darnton, Director of the Harvard University Library, together with some comments on them. Each article is available online:

- Google & the Future of Books (Feb. 12, 2009)
- Google & Books: An Exchange (March 26, 2009)
- Google and the New Digital Future (Dec. 17, 2009)

Read the following article from the New York Times Magazine about the role of so-called collecting societies in the music industry:

- The Music-Copyright Enforcers (August 6, 2010)

- **Class 2: Why Copyright? Introductory Problems** Read Casebook 745-750 (*NBA v. Motorola*) and Casebook 303-306 (*Nichols v. Universal Pictures Corp.*)

II. The Purposes of Copyright Law

Optional: Stephen Breyer, *The Uneasy Case for Copyright: A Study of Copyright in Books, Photocopies, and Computer Programs*, 84 Harv. L. Rev. 281 (1970)

- **Class 3: Copyright in Context** Casebook 3-42

III. Limitations on Copyright: Fair Use

Optional: Michael J. Madison, *A Pattern-Oriented Approach to Fair Use*, 45 Wm. & Mary L. Rev. 1525 (2004)

- **Class 4: Cultural Interchange** Casebook 529-565 (*Harper & Row Publishers v. Nation Enterprises*; *Campbell v. Acuff-Rose Music, Inc.*; *New Era Publications Int'l v. Carol Publishing Group*; *Castle Rock Entertainment v. Carol Publishing Group, Inc.*; *Nunez v. Caribbean International News Corp.*; *Bill Graham Archives v. Dorling Kindersley Limited*, in the Softcover Supplement)
- **Class 5: Market Failure or “Productive Consumption”?** Casebook 580-603 (*Sony Corporation of America v. Universal City Studios, Inc.*; *A&M Records, Inc. v. Napster, Inc.*; *American Geophysical Union v. Texaco, Inc.*)
- **Class 6: Technical Interchange** Casebook 565-579 (*Sega Enterprises Ltd. v. Accolade, Inc.*; *Sony Computer Entertainment, Inc. v. Connectix Corp.*; *Perfect 10, Inc. v. Amazon.com, Inc.*)

IV. The Subject Matter of Copyright Law

Optional: David Nimmer, *Copyright in the Dead Sea Scrolls: Authorship and Originality*, 38 Hous. L. Rev. 1 (2001)

- **Class 7: Fixation** Casebook 45-57 (*Williams Electronics, Inc. v. Artic International, Inc.*; *MAI Systems Corp. v. Peak Computer, Inc.*)
- **Class 8: Originality** Casebook 57-81 (*Feist Publications, Inc. v. Rural Telephone Service Co.*; *Burrow-Giles Lithographic Co. v. Sarony*; *Bleistein v. Donaldson Lithographing Co.*; *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*; *Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.*; *Mannion v. Coors Brewing Co.*)
- **Class 9: The Idea/Expression Distinction** Casebook 81-99 (*Baker v. Selden*; *A.A. Hoehling v. Universal City Studios, Inc.*; *American Dental Association v. Delta Dental Plans Association*)
- **Class 10: Derivative Works and Compilations** Casebook 99-116 (*L. Batlin & Son v. Snyder*; *Entertainment Research Group, Inc. v. Genesis Creative Group, Inc.*; *Feist Publications, Inc. v. Rural Telephone Service Co.*; *Roth Greeting Cards v. United Card Co.*; *Mason v. Montgomery Data, Inc.*)
- **Class 11: Authorship** Casebook 116-124 (*Lindsay v. The Wrecked and Abandoned Vessel R.M.S. Titanic*; *Erickson v. Trinity Theatre, Inc.*; *Aalmuhammed v. Lee*)

- **Class 12: Works Made for Hire** Casebook 124-140 (*Community for Creative Non-Violence v. Reid; Aymes v. Bonelli; Roeslin v. District of Columbia*)

Memorandum Assignment Number One will be distributed around this time. The Assignment will be due on Friday, February 18, 2011.

V. Acquiring, Keeping, and Transferring Copyright

Optional: Maureen A. O'Rourke, *Bargaining in the Shadow of Copyright After Tasini*, 53 Case W. Res. L. Rev. 605 (2003)

- **Class 13: Mechanics of Transfers** Casebook 605-644 (*Asset Marketing Systems, Inc. v. Gagnon; New York Times Co. v. Tasini; Boosey & Hawkes Music Publishers, Ltd. v. The Walt Disney Company; Random House v. Rosetta Books; Vernor v. Autodesk, Inc.; Jacobsen v. Katzer*)
- **Class 14: Formalities** Casebook 145-160 (*Estate of Martin Luther King, Jr., Inc. v. CBS, Inc.*)
- **Class 15: Duration; Renewals and Terminations of Transfers** Casebook 160-189 (*Eldred v. Ashcroft; Stewart v. Abend*)

VI. Protected Works and Boundary Problems

Optional: Dennis S. Karjala, *Distinguishing Patent and Copyright Subject Matter*, 35 Conn. L. Rev. 439 (2003)

- **Class 16: Useful Articles with Pictorial, Graphic, or Sculptural Aspects** Casebook 191-215 (*Mazer v. Stein; Kieselstein-Cord v. Accessories by Pearl, Inc.; Carol Barnhart Inc. v. Economy Cover Corp.; Brandir International, Inc. v. Cascade Pacific Lumber Co.*)
- **Class 17: Architectural Works** Casebook 246-257 (*Nelson-Salabes, Inc. v. Morningside Holdings; Intervest Construction, Inc. v. Canterbury Estate Homes, Inc.*)
- **Class 18: Characters** Casebook 257-267 (*Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co.; Titan Sports, Inc. v. Turner Broadcasting Systems, Inc.*)

VII. The Statutory Rights of Copyright Owners I

Optional: Lydia Pallas Loren, *Untangling the Web of Music Copyrights*, 53 Case W. Res. L. Rev. 673 (2003)

- **Class 19: The Elements of Infringement** Casebook 289-302 (*Three Boys Music Corp. v. Michael Bolton; Selle v. Gibb; Ty, Inc. v. GMA Accessories, Inc.*)
- **Class 20: The Reproduction Right** Casebook 302-341 (*Nichols v. Universal Pictures Corp.; Arnstein v. Porter; Steinberg v. Columbia Pictures Industries, Inc.; Boisson v. Banian, Ltd.; Mannion v. Coors Brewing Co.; Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp.; Cavalier v. Random House, Inc.; Swirsky v. Carey; Computer Associates International, inc. v. Altai*)

Memorandum Assignment Number Two will be distributed around this time. The Assignment will be due on Friday, April 1, 2011.

- **Class 21: The Distribution Right** Casebook 341-365 (*Capitol Records, Inc. v. Thomas; Bobbs-Merrill Company v. Straus; Quality King Distributors, Inc. v. L'anza Research International, Inc.*)
- **Class 22: The Right to Prepare Derivative Works, and Moral Rights** Casebook 365-411 (*Castle Rock Entertainment, Inc. v. Carol Publishing Group, Inc.; Warner Bros. Entertainment, Inc. v. RDR Books; Mirage Editions, Inc. v. Albuquerque A.R.T. Company; Lee v. A.R.T. Company; Lewis Galoob Toys, Inc. v. Nintendo of America, Inc.; Micro Star v. FormGen, Inc.; Gilliam v. American Broadcasting Companies, Inc.; Lilley v. Stout; Martin v. City of Indianapolis; Dastar Corp. v. Twentieth Century Fox Film Corp.*)
- **Class 23: The Public Performance and Public Display Rights** Casebook 411-436 (*Columbia Pictures Indus. v. Redd Horne, Inc.; Cartoon Network LP and CSC Holdings, Inc. and Perfect 10, Inc. v. Amazon.com, Inc.*)

VIII. The Statutory Rights of Copyright Owners II

- **Class 24: Copyright and Collective Rights Organizations: The Case of the Music Industry** Casebook 436-472 (*Newton v. Diamond; Bridgeport Music, Inc. v. Dimension Films; Arista Records, LLC v. Launch Media, Inc.*)
- **Class 25: Identifying Defendants** Casebook 469-501 (*Religious Technology Center v. Netcom On-Line Communication Services, Inc.; Fonovisa, Inc. v. Cherry Auction, Inc.; Perfect 10, Inc. v. Amazon.com, Inc.; Perfect 10, Inc. v. Visa International Service Association; MGM Studios Inc. v. Grokster Ltd.*)

IX. Technological Protection and Copyright Substitutes (*Time Permitting*)

Optional: R. Anthony Reese, *Will Merging Access Controls and Rights Controls Undermine the Structure of Anticircumvention Law*, 18 Berkeley Tech. L.J. 619 (2003)

- **Class 26: The Technological Protection Debate, the DMCA, and Copyright Liability** Casebook 657-692 (*University City Studios, Inc. v. Reimerdes; Chamberlain Group, Inc. v. Skylink Tech, Inc.; Lexmark International v. Static Control Components*)

Memorandum Assignment Number Three will be distributed during the last week of class. The Assignment will be due on the last day of exams.