

COPYRIGHT

LAWS 7301-001

Fall 2020

Mondays and Wednesdays, 2:30 – 3:50 pm

Room 205 & via [Zoom](#)

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Online office hours Monday & Wednesday [by appointment](#)

[Course Website](#)

A Note re Law School During a Global Pandemic

Our goal for the semester will be to do our best. Some days, that may mean volunteering to take the first case. Other days, that may mean muting your mic repeatedly while your partner takes a conference call on speaker. For some students, that may mean writing a midterm paper so good they decide to turn it into a Note. For other students, that may mean remembering to turn in a midterm paper. You will almost certainly hear and see my children, both with and without clothes. Your dog/cat/child/partner/roommate may join us inadvertently from time to time, or every time. All of this is fine. We will do our best.

Overview

This course will cover the system of legal protection for creative expression and content dissemination in the United States, with a particular emphasis on policy and policy implications. Topics covered may include: requirements for copyright protection, copyrightable subject matter (including compilations and derivative works), authorship and ownership, formalities and duration, useful articles, Section 106 rights (+ moral rights), copyright infringement and its elements, exceptions (especially fair use), the music industry, substantial similarity analysis, direct and secondary liability, and remedies. Wherever possible, we will include and encourage discussion of the historical, cultural, and racial contexts in which copyright law arose, and how lawmakers have (and haven't) accommodated evolving norms.

Prerequisite(s)

None. If you have previously taken (or are simultaneously taking) Introduction to IP, we will inevitably cover some familiar cases, though likely in greater detail, and with an eye toward the statutory nuances, historical context, and policy implications.

Course Materials

The readings for this course will come primarily from the casebook: Jeanne C. Fromer and Christopher Jon Sprigman, *Copyright Law: Cases and Materials*, V2.0. This text is available to read and/or download for free at <http://copyrightbook.org/>. If, like me, you prefer the old school feeling of pen on paper, you can also [purchase a low-cost hardcopy version](#) from Amazon for about \$15.00.

Some readings will come from supplemental materials as linked in-line in the Topics & Readings section below.

In addition, you will need access to [the Copyright Act of 1976 \(as amended\)](#), the statute governing copyright law in the US. An easily searchable online version is also available [here](#).

Should you want a deeper dive of, or clarification on, any of the topics discussed in class, [Nimmer on Copyright](#) is a copyright treatise available on Lexis, and in hard copy in the library.

Evaluation & Grading Policy

Your grade in this course will be based on (a) your performance on the midterm paper (25%), and (b) your performance on the final assessment (75%), with a potential adjustment based on class attendance and participation. The final assessment will be distributed in advance, and will be due on the last day of the exam period.

Class Attendance & Participation

Please plan to attend, on time, and come prepared for, all class meetings. Attendance, preparation, participation, and professionalism all count toward the class participation grade. I generally teach using [the Socratic Method](#), in which I begin by questioning specific student(s), drawn randomly, after which I take volunteers. I will announce which students are “on call” at the top of each class. If you know you will be unprepared, please notify me in advance. I recognize that conflicts may occasionally arise, and you need not inform me in advance of an isolated absence. If a situation arises that will result in multiple absences or instances of unpreparedness, however, this should be brought to my attention. Otherwise, it may negatively affect your participation grade.

Audio/Visuals

This class will make extensive use of projected slides, audio and video clips. If you have difficulty perceiving any of the materials, please see me, and/or [Disability Services](#) for assistance. I’m happy to make whatever accommodation you need. All slides and other media will also be posted to the [course website](#).

Recording Policy

All class meetings will be recorded, transcribed, and posted to the [course website](#) for easy access anytime.

Make-up Classes

If we are unable to meet for a regularly-scheduled class session, you will be notified in advance, and a make-up will be scheduled.

Topics & Readings

The following reading schedule is aspirational, and subject to change as we go along and find ourselves spending more or less time on certain topics. Any changes will be announced in class for the next class meeting. I will also try to send out an email about it, so please make sure I have your correct email address. All page numbers refer to the *Fromer & Sprigman* text. Supplemental materials are noted, and linked in-line below.

Class	Topic/Major Cases	Pages
1	Introduction	1-16
2	Fixation; Originality I <ul style="list-style-type: none"> ▪ <i>Cartoon Network LP v. CSC Holdings, Inc.</i> ▪ <i>Burrow-Giles Lithographic Co. v. Napoleon Sarony</i> ▪ <i>Bleistein v. Donaldson Lithographing Company</i> 	17-20, 22-31
3	Originality II <ul style="list-style-type: none"> ▪ <i>Feist Publications v. Rural Telephone Service</i> ▪ Prunte v. Universal Music Group, Inc. ▪ Mannion v. Coors Brewing Co. 	33-36 & supplemental readings
4	Derivative Works and Compilations <ul style="list-style-type: none"> ▪ <i>L. Batlin & Son, Inc. v. Jeffrey Snyder</i> ▪ <i>Daniel Shrock v. Learning Curve International, Inc.</i> ▪ <i>Feist Publications, Inc. v. Rural Telephone Service Co.</i> 	45-59
5	Idea-Expression Distinction <ul style="list-style-type: none"> ▪ <i>W.C.M. Baker v. Charles Selden</i> ▪ <i>Lars Erickson v. Michael John Blake</i> ▪ <i>A.A. Hoehling v. Universal City Studios, Inc.</i> 	59-75
6	Copyrightable Subject Matter: Useful Articles & Software <ul style="list-style-type: none"> ▪ <i>Mazer v. Stein</i> ▪ <i>Star Athletica, LLC v. Varsity Brands, Inc.</i> ▪ <i>Silvertop Associates Inc. v. Kangaroo Manufacturing Inc.</i> ▪ <i>Oracle v. Google</i> 	78-99, 132-142
7	Authorship and Ownership	143-163

	<ul style="list-style-type: none"> ▪ <i>Alexander Lindsay v. The Wrecked and Abandoned Vessel R.M.S. Titanic</i> ▪ <i>Cindy Lee Garcia v. Google, Inc.</i> ▪ <i>Karen Erickson v. Trinity Theatre, Inc.</i> ▪ <i>Jefri Aalmuhammed v. Spike Lee</i> ▪ <i>Community for Creative Non-Violence v. James Earl Reid</i> 	
8	<p>Copyright Formalities and Duration</p> <ul style="list-style-type: none"> ▪ <i>Eric Eldred v. John D. Ashcroft</i> ▪ <i>Lawrence Golan v. Eric H. Holder, Jr.</i> 	169-171, 187-206
9	<p>The Reproduction Right – Copying in Fact</p> <ul style="list-style-type: none"> ▪ <i>Three Boys Music Corporation v. Michael Bolton</i> ▪ <i>Ronald H. Selle v. Barry Gibb</i> ▪ <i>Ty, Inc. v. GMA Accessories, Inc.</i> 	219-231
10	<p>The Reproduction Right – Copying in Law</p> <ul style="list-style-type: none"> ▪ <i>Anne Nichols v. Universal Pictures Corporation</i> ▪ <i>Sid & Marty Krofft v. Mcdonald’s Corp.</i> ▪ <i>Jacobus Rentmeester v. Nike, Inc.</i> 	235-238, 254-256, 263-272
11	<p>Substantial Similarity Analysis: The Special Case of Copying in Music</p> <ul style="list-style-type: none"> ▪ Williams v. Gaye ▪ Skidmore v. Zeppelin ▪ Gray v. Perry 	Supplemental readings
12	<p>The Music Industry: De Minimus Use & Sampling</p> <ul style="list-style-type: none"> ▪ Newton v. Diamond ▪ Bridgeport Music, Inc. v. Dimension Films ▪ <i>VMG Salsoul, LLC v. Madonna Louise Ciccone</i> 	370-380 (skim), 380-394 & supplemental readings
13	<p>The Right to Prepare Derivative Works; Moral Rights</p> <ul style="list-style-type: none"> ▪ <i>Warner Bros. Entertainment v. RDR Books</i> ▪ <i>Terry Gilliam v. American Broadcasting Companies, Inc.</i> ▪ <i>Dastar Corp. v. Twentieth Century Fox Corp.</i> ▪ <i>Maria Castillo v. G&M Realty L.P.</i> 	275-288, 304-326

14	We will not meet for class. Your midterm paper will be due at the end of the day. You may choose to use designated class time to complete and submit your midterm.	
15	<p>The Distribution Right</p> <ul style="list-style-type: none"> ▪ <i>Capital Records, LLC v. ReDigi, Inc.</i> ▪ <i>Supap Kirtsaeng v. John Wiley & Sons, Inc.</i> ▪ Capitol Records, Inc. v. Thomas 	326-27, 330-345 & supplemental readings
16	<p>The Rights of Public Performance and Display</p> <ul style="list-style-type: none"> ▪ <i>Columbia Pictures Industries, Inc. v. Redd Horne, Inc.</i> ▪ <i>Cartoon Network LP v. CSC Holdings, Inc.</i> ▪ <i>American Broadcasting Companies, Inc. v. Aereo, Inc.</i> ▪ <i>Perfect 10, Inc. v. Amazon.com, Inc.</i> 	345-367
17	<p>Copyright Infringement Elements & Analysis</p> <ul style="list-style-type: none"> ▪ <i>Arnstein v. Porter</i> ▪ Jones v. Blige ▪ Bright Tunes Music Corp. V. Harrisongs Music, Ltd. ▪ Gottlieb Development, LLC v. Paramount Pictures Corp 	238-242 & supplemental readings
18	Copyright, Music and Race	Supplemental readings
19	<p>Fair Use I: Traditional Media</p> <ul style="list-style-type: none"> ▪ <i>Harper & Row, Publishers, Inc. v. Nation Enterprises</i> ▪ <i>Luther R. Campbell v. Acuff-Rose Music, Inc.</i> ▪ <i>Sony Corporation of America v. Universal City Studios, Inc.</i> 	395-414, 434-442
20	<p>Fair Use II: Market Failure & Market Effect</p> <ul style="list-style-type: none"> ▪ <i>Blanch v. Koons</i> ▪ Cariou v. Prince ▪ Graham v. Prince 	423-432 & supplemental readings

21	Fair Use III: Software & Technology <ul style="list-style-type: none"> ▪ <i>Oracle America, Inc. v. Google, LLC</i> ▪ <i>Perfect 10, Inc. v. Amazon.com, Inc.</i> ▪ <i>The Authors Guild v. Google, Inc.</i> 	473-496
22	Direct and Secondary Liability <ul style="list-style-type: none"> ▪ <i>Cartoon Network LP v. CSC Holdings, Inc.</i> ▪ <i>Fonovisa, Inc. v. Cherry Auction, Inc.</i> ▪ <i>Perfect 10, Inc. v. Amazon.com, Inc.</i> ▪ <i>Perfect 10, Inc. v. Visa International Service</i> 	497, 500-518
23	Liability of Online Service Providers and Section 512 Safe Harbor <ul style="list-style-type: none"> ▪ <i>Viacom International, Inc. v. YouTube, Inc.</i> ▪ <i>Marvix Photographs, LLC v. LiveJournal, Inc.</i> ▪ <i>Stephanie Lenz v. Universal Music Corp.</i> 	518-543
24	Liability of Device Manufacturers <ul style="list-style-type: none"> ▪ <i>Sony Corporation of America v. Universal City Studios, Inc.</i> ▪ <i>A&M Records, Inc. v. Napster, Inc.</i> ▪ <i>Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.</i> 	543-564
25	Guest Lecture <ul style="list-style-type: none"> ▪ Shirin Chahal (Colorado Law '11) from the Law Offices of Daniel T. Goodwin will discuss porn copyright troll defense work, statutory damages, and reputational risk assessment 	Supplemental readings, if any, to be distributed
26	Remedies: Injunctive Relief, Actual Damages & Statutory Damages <ul style="list-style-type: none"> ▪ <i>Christopher Phelps & Associates, LLC v. R. Wayne Galloway</i> ▪ <i>Frederick E. Bouchat v. Baltimore Ravens Football Club</i> ▪ <i>Capitol Records, Inc. v. Jammie Thomas-Rasset</i> 	570-582, 587-591
27	In-Class (Online) Final Exam Review	