

COPYRIGHT

PROFESSOR KRISTELIA GARCÍA | *University of Colorado Law School*

Fall 2022 | Mondays & Wednesdays 1:00 pm – 2:20 pm | Wolf Law 301 | w [Course Website](#)

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OVERVIEW

Welcome! 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 include: requirements for copyright protection, copyrightable subject matter, authorship, useful articles, Section 106 rights (including moral rights), copyright infringement and its elements, exceptions (especially fair use), copyright licensing (via the music industry), copyright infringement (with a focus on substantial similarity analysis), direct and secondary liability, and remedies. When applicable, we will include and encourage discussion of the historical, cultural, political 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 invariably cover some of the same cases, possibly 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*, v4.0. This text is available to read and/or download for free [here](#). You can also purchase a [low-cost hardcopy version](#) from Amazon for about \$15.

Other materials are available on the [course website](#), and may be downloaded at the links 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](#).

You should feel free to use whichever third-party supplements you find helpful. Should you want a deeper dive of, or clarification on, any of the topics discussed in class, *Nimmer on Copyright*, a leading treatise, is available on Lexis and in hard copy in the library.

EVALUATION & GRADING POLICY

Your grade in this course will be based on your performance on (i) a midterm short essay (15%), (ii) a final examination (75%), and (iii) the quality of your class participation (10%) as detailed in the section below.

The instructions and topic(s) for the midterm short essay will be distributed one week prior to the due date. The final exam will be an in-class, open-book, open-note, three-hour exam. More detail on the format and coverage of the final examination will be provided closer to the respective exam date. Please check the law school's final exam schedule for the latest date and time information.

CLASS PARTICIPATION

Please plan to attend, and come prepared for, all class meetings. Attendance, preparation, participation, and professionalism all count toward the class participation grade. For each class meeting, I use a computerized algorithm to generate a list of students to be on call that day, after which volunteers are welcome. The algorithm I use departs from pure randomness so as to give everyone a fair opportunity to speak over the course of the semester. On any given day, someone who has never been on call has a greater chance of being called on than someone who has been on call once, and a much greater chance of being called on than someone who has been on call four times, and so on. This means that being on call one day makes you less likely to be on call the next, but please know that there's no guarantee, and your name could theoretically pop up multiple days in a row. I will announce the on-call list at the start of each class meeting.

I understand that life happens. You can always take a pass. If you know you will be unprepared for a particular class meeting, I encourage you to nonetheless come to class (so that you might absorb whatever you can from lecture and discussion), and to please notify me by email at least 2 hours prior to lecture so that I can remove you from the on-call queue. The same goes for isolated absences. In the case of a foreseen absence, I ask that you email me to let me know you will not be in class so that I can remove you from the queue. You do not need to explain to me why you are taking a pass (and in some cases, it's probably better you don't ☺). I ask students to limit their passes to two per semester. Personal emergencies and/or illness are always excused. If either of these arise for you, please get in touch with me directly and you'll be excused without using up a pass. If a situation arises that will result in multiple absences or instances of unpreparedness, this should be brought to my attention. Otherwise, it will negatively affect your participation grade.

REMOTE ATTENDANCE & CLASS RECORDINGS

With the exception of any prerecorded lectures, all students are expected to attend class in-person for all class meetings. Students with a verified accommodation to attend remotely should discuss with me in advance so that I can enable Zoom for the approved class session(s). Please note that I cannot approve any such accommodations; they must be secured through the Dean's Office. By default, in-person class meetings will not be recorded. If you would like to request that a particular class session be recorded, please speak with me in advance.

OFFICE HOURS

You can arrange an appointment with me for an office hour through my [online scheduling portal](#). If you do not see a time that works for you, please email me. I encourage students to sign up in groups, if helpful, and to feel free to invite classmates to join you during your appointment. When you go to book online, the portal will give the option of meeting in-person or via Zoom. Please note that the in-person option is only available on Mondays and Wednesdays.

AUDIO/VISUALS

This class will make extensive use of projected slides, including 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 work with you in making whatever accommodation may be helpful. All slides and other media will also be posted to the [course website](#) following each lecture.

LAPTOPS

Laptops are permitted in class for note-taking purposes only. Use of laptops or other electronic devices for any other purpose will be considered a violation of professional courtesy, will negatively affect your participation grade, and may result in loss of laptop privileges.

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 generally send out an email with any reading updates, so please make sure I have your correct email address.

Page numbers below refer to the *Fromer & Sprigman* casebook. Supplemental readings and cases are linked in-line below. Listed cases indicate those most likely to be focused on in class discussion.

Class	Topics & Readings	Pages
1 Aug. 22 (M)	Introduction <ul style="list-style-type: none"> ▪ Does Kelis Have a Legal Standing in Beef Over Beyoncé's 'Milkshake' Interpolation? ▪ Netflix Sues 'Unofficial Bridgerton Musical' Creators Days After Sold-Out Live Show ▪ Peloton Sued for 'Outrageous' Use of Cypress Hill Songs ▪ Megan Thee Stallion & Big Sean Facing Lawsuit Over 'Strikingly Similar' Song 	1-16 & linked articles
2 Aug. 24 (W)	Fixation; Originality I (Classic Cases) <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 Aug. 29 (M)	Originality II (Contemporary Cases) <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 & linked cases
4 Aug. 31 (W)	Derivative Works and Compilations <ul style="list-style-type: none"> ▪ <i>L. Batlin & Son, Inc. v. Jeffrey Snyder</i> ▪ <i>Daniel Shroock v. Learning Curve International, Inc.</i> ▪ <i>Feist Publications, Inc. v. Rural Telephone Service Co.</i> 	44-59
Labor Day September 5th – No Class		
5 Sept. 7 (W)	Idea-Expression Distinction <ul style="list-style-type: none"> ▪ <i>W.C.M. Baker v. Charles Selden</i> ▪ Lars Erickson v. Michael John Blake ▪ <i>A.A. Hoebling v. Universal City Studios, Inc.</i> 	59-65, 70-75 & linked case
6 Sept. 12 (M)	Copyrightable Subject Matter: Useful Articles <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> 	76-100
7 Sept. 14 (W)	Authorship and Ownership <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> 	137-157
8 Sept. 19 (M)	Duration and Terminations of Transfer <ul style="list-style-type: none"> ▪ <i>Eldred v. Ashcroft</i> 	177-201, 208-211 & linked case

	<ul style="list-style-type: none"> ▪ <i>Golan v. Holder</i> ▪ Waite v. UMG Recordings, Inc. 	
9 Sept. 21 (W)	The Reproduction Right – Copying in Fact <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> 	213-225
10 Sept. 26 (M)	The Reproduction Right – Copying in Law – Substantially Similarity <ul style="list-style-type: none"> ▪ <i>Anne Nichols v. Universal Pictures Corporation</i> ▪ <i>Arnstein v. Porter</i> ▪ <i>Sid & Marty Krofft v. McDonald's Corp.</i> ▪ <i>Jacobus Rentmeester v. Nike, Inc.</i> 	229-237, 248-251, 258-267
11 Sept. 28 (W)	Substantial Similarity Analysis: The Special Case of Copying in Music <ul style="list-style-type: none"> ▪ Williams v. Gaye ▪ Skidmore v. Zepelin ▪ Gray v. Perry <p>Midterm short essay materials will be distributed and due in one week.</p>	Linked cases
12 Oct. 3 (M)	Guest Lecture	Readings to be distributed
13 Oct. 5 (W)	We will not meet in-person for class this week. Your midterm short essay will be due at the end of the day.	
14 Oct. 10 (M)	The Distribution Right <ul style="list-style-type: none"> ▪ <i>Capitol Records, LLC v. ReDigi, Inc.</i> ▪ <i>Supap Kirtsaeng v. John Wiley & Sons, Inc.</i> 	270-1, 273-289
15 Oct. 11 (W)	The Right to Prepare Derivative Works; Moral Rights <ul style="list-style-type: none"> ▪ <i>Warner Bros. Entertainment v. RDR Books</i> ▪ <i>Terry Gilliam v. American Broadcasting Companies, Inc.</i> ▪ <i>Maria Castillo v. G&M Realty L.P.</i> 	289-301, 317-324, 331-339
16 Oct. 17 (M)	The Rights of Public Performance and Display <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> 	339-364
17 Oct. 19 (W)	The Music Industry: De Minimus Use & Sampling <ul style="list-style-type: none"> ▪ Newton v. Diamond ▪ Bridgeport Music, Inc. v. Dimension Films ▪ <i>VMG Salsoul, LLC v. Madonna Louise Ciccone</i> 	364-374 (skim), 374-387, 387-388 (skim) & linked cases
18 Oct. 24 (M)	Reading Packet: Copyright, Music and Race Article: Rap on Capitol Hill: Proposed Federal Law Would Ban Lyrics From Criminal Cases	Linked reading packet & article
19 Oct. 26 (W)	Fair Use I: Foundational Cases <ul style="list-style-type: none"> ▪ <i>Harper & Row, Publishers, Inc. v. Nation Enterprises</i> ▪ <i>Sony Corporation of America v. Universal City Studios, Inc.</i> ▪ <i>Luther R. Campbell v. Acuff-Rose Music, Inc.</i> 	389-418

20 Oct. 31 (M)	Fair Use II: Indexing & Software <ul style="list-style-type: none"> ▪ <i>The Authors Guild v. Google, Inc.</i> ▪ <i>Oracle America, Inc. v. Google, LLC</i> 	452-482
21 Nov. 2 (W)	Fair Use III: Appropriation Art <ul style="list-style-type: none"> ▪ Please read the text discussing <i>Rogers v. Koon, Blanch v. Koons</i>, and <i>Carion v. Prince</i> carefully ▪ <i>Warhol v. Goldsmith</i> 	482-505
22 Nov. 7 (M)	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> 	507, 511-529
23 Nov. 9 (W)	Liability of Online Service Providers and the Section 512 Safe Harbor <ul style="list-style-type: none"> ▪ <i>Viacom International, Inc. v. YouTube, Inc.</i> ▪ <i>Marix Photographs, LLC v. LiveJournal, Inc.</i> ▪ <i>Stephanie Lenz v. Universal Music Corp.</i> 	529-554
24 Nov. 14 (M)	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> 	555-575
25 Nov. 17 (W)	Remedies <ul style="list-style-type: none"> ▪ <i>Christopher Phelps & Associates, LLC v. R. Wayne Galloway</i> ▪ <i>On Davis v. Gap, Inc.</i> ▪ <i>Frederick E. Bouchat v. Baltimore Ravens Football Club</i> 	582-606
** Fall Break November 21-25**		
26 Nov. 28 (M)	Special Presentation on the new Copyright Small Claims Court	Readings to be distributed
27 Nov. 30 (W)	In-Class Final Exam Review Session	