

**Copyright
Spring 2008
Version 1.0fixed**

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Syllabus

Course Description

This course investigates the principal system of legal protection for expressive content under American law. In the information economy, Intellectual Property in creative works comprises a large and growing percentage of the wealth held by many corporations and individuals. Strong Copyright protection encourages new creative works and helps American companies stay competitive in the global marketplace. At the same time, Copyright Law is a balance, drafted and construed to allow artists, authors, musicians, and others to build and borrow on the creative works that have come before. Striking this appropriate balance is one of the central policy challenges explored in this course.

This is a course that emphasizes statutory interpretation. The Copyright Act is a complicated, often counter-intuitive text, and we will try to make sense of parts of it, consider how to improve it, and speculate about how it evolved into its present form.

Class Times and Office Hours

The class will meet every Tuesday and Thursday from 1:00pm – 2:15pm in Room 207. I generally will be available for office hours immediately after class, on Tuesdays and Thursdays from 2:30pm – 3:30pm in Room 433 or at any other time by appointment. I can also be reached via e-mail at paul.ohm@colorado.edu.

Course Expectations

Grading. Grades for the course will be based on (1) a final exam and (2) class participation. I value class participation highly and will count it toward your final grade. Grades can be increased or decreased up to five points to reflect participation.

Participation. I expect you to be prepared to participate every class and will call on you without prior notice. If, however, you are unable to prepare for class on a particular day for whatever reason, please attend anyway. Send me an e-mail at least one hour before we begin, or leave me a note on the podium at the front of the room before class starts and I will not call on you during that day. You may not use this "pass" more than three times during the semester unless you come talk to me about your situation. If you do not leave me a note but are completely unprepared when I call on you, your grade will be negatively affected.

In addition to the call system, voluntary participation is encouraged. Your grade will be positively affected by consistent, insightful contributions.

I will pass around a seating chart on Tuesday, January 22nd. Be aware that I make heavy use of the overhead, computer projector, so consider your ability to see the screen when choosing your seat.

Knowledge of Technology. Although many of the cases in this class involve technology, with a particular emphasis on computer and Internet technology, no prior technical background or knowledge is required. Any technology that needs to be understood will be explained in class, and students should not hesitate to ask for further clarification.

Course Methodology

Although this class is taught in a fairly traditional manner, be aware of a couple novel aspects of the course:

Classroom Technology. I do not use chalk and chalkboard in my class. Instead, I use a technology known as mind mapping software and in particular, I use a product called MindManager made by a company called MindJet. This product provides many of the advantages of PowerPoint with few of PowerPoint's weaknesses. For each class, I will start with a skeleton mindmap which I will fill in during the class with student contributions. At the end of each class (usually on the same day), I will upload a pdf version of the mindmap to the course website. Please choose a seat in the classroom that allows you to see the computer images projected on the screen.

Conferences. We will not meet on Tuesday, March 4th. Instead, on April 9th at 5:30pm, students are required to attend a debate hosted by Silicon Flatirons and moderated by Professor Ohm between attorneys for the Electronic Frontier Foundation and the Recording Industry Association of America. More details will follow, later in the semester.

Students who cannot attend the April 9th debate may instead attend at least two of the three sessions of a Silicon Flatirons conference on Tuesday, March 4th, from approximately 3:00 to 6:30 PM, on Innovation, Intellectual Property, and Entrepreneurship in The Information Industries.

Reading will be assigned before the conference and debate, and I reserve the right to call on students during the conference. If can attend neither the debate nor the conference due to prior scheduling conflicts, you must let me know in advance, and a make-up assignment will be offered. Failure to attend one of the two events will be factored into the participation grade.

Course Materials

Required Texts. Our primary source will be a casebook: Joyce, Leaffer, Jaszi, and Ochoa, COPYRIGHT LAW (7th Ed. 2006). Additionally, you are required to have the 2007 CUMULATIVE SUPPLEMENT to the Casebook, which has also been made available in the bookstore.

A note on casebook notes: Assume that all "Notes and Questions" that fall within the assigned pages listed below are to be read and considered, unless the assignment specifically instructs skipping the Notes.

Optional Texts. For further background, four optional books are recommended. Two of these are available in limited supply in the bookstore:

1. Jessica Litman, DIGITAL COPYRIGHT (Prometheus Books 2001).
2. Jane Ginsburg and Rochelle Cooper, eds., INTELLECTUAL PROPERTY STORIES (Foundation Press 2006).

The other two optional books have been made available in their entirety on the web:

3. Lawrence Lessig, FREE CULTURE (Penguin Press 2004) (available at <http://free-culture.org/freecontent/>).
4. Edward Samuels, THE ILLUSTRATED STORY OF COPYRIGHT (2000) (available at <http://www.edwardsamuels.com/illustratedstory/index.htm>).

Other Resources. Rebecca Tushnet, a Professor at Georgetown, has made available an online database full of multimedia files (images, audio, and video) relating to important copyright cases and concepts. She provides access to this database to any interested law professors and students. I borrow heavily from this site for my classroom materials, and I invite you to browse the collection at your leisure. To access the site, visit <http://www.law.georgetown.edu/IntellectualProperty/index.cfm?FuseAction=IntellectualProperty.Home> and use the user ID and password provided in class.

In addition, Columbia Law School hosts a repository of information relating to copyright cases involving music. For just about every significant copyright-related music case, the database contains background information and clips and videos of the musical works in question (often in copyright-friendly short excerpts, naturally). You can access this site at <http://ccnmtl.columbia.edu/projects/law/library/introduction.html>.

Course Website. Our course website is at paulohm.com/classes/copr08. Here, you will find class mind maps, important announcements, supplemental readings (most of which are mentioned in the day-by-day syllabus, below), changes to the reading, and links to other resources. Supplemental readings will be made available at least two classes prior to the assigned date. The top part of the website will list "Latest Changes to the Site" which can be scanned to see what is important and new. Students are advised to consult the website before every class, particularly when a class is missed. There is no TWEN site for this course.

Assigned Topics and Reading

Chapter 1: Introduction: The Landscape of Copyright

§§ 1.01, 1.02[A]

1: T 1/15 pp. 1-3, 14-26, and 49-61. [29]
Skim pp. 4-14. [skim 11]

Chapter 2: Prerequisites for Copyright Protection

§ 2.01 Fixation

2: R 1/17 pp. 63-79 [17]; §§ 101 ("copies", "created", "device, machine, or process," "fixed," and "phonorecords"), 102(a), 1101.

§ 2.02[A]-[D] Originality

3: T 1/22 pp. 80-101 [22]; §§ 101 ("created"), 102(a).

§ 2.02[E], [F] Idea/Expression Dichotomy

4: R 1/24 pp. 102-10; 121-28 [17]; §§ 102(b) (skip *Mannion v. Coors Brewing* and Notes following).

Chapter 3: Works of Authorship

§ 3.01 [A] Introduction

§ 3.01 [B] Literary Works and Software

5: T 1/29 pp. 133-47 [15]; §§ 101 "including" and "such as", "literary works"), 102(a).

§ 3.01[C] Musical Works, Dramatic Works, and Pantomines and Choreographic Works

§ 3.01[E] Motion Pictures

§ 3.01[F] Sound Recordings

§ 3.01[D] Pictorial, Graphical, and Sculptural Works and Useful Articles (part one)

6: R 1/31 pp. 165-67, 193-99, 167-89 (note out-of-order sequence) [33]; §§ 101 ("audiovisual works", "motion pictures," "pictorial, graphic, and sculptural works," "sound recordings," "useful article"), 102(a), 113(a-c).

§ 3.01[D] Pictorial, Graphic, and Sculptural Works and Useful Articles (cont.)

§ 3.01[G] Architectural Works

7: T 2/5 pp. 199-213 [15]; §§ 101 ("architectural work", "pictorial, graphic, and sculptural works"), 120.

§ 3.02[A], [B] Derivative Works

8: R 2/7 pp. 213-28 [16]; §§ 101 ("derivative work"), 103.

§ 3.02[C] Compilations (Feist)

9: T 2/12 pp. 228-44 [17]; §§ 101 ("collective work" and "compilation"), 103.

Chapter 4: Ownership and Transfers

§ 4.01 [A] Initial Ownership: Introduction

§ 4.01 [B] Works Made for Hire

10: R 2/14 pp. 251-71 [21]; §§ 101 ("copyright owner," "work made for hire"), 201(a, b).

§ 4.01 [C] Joint Works

§ 4.01 [D] Collective Works

11: T 2/19 pp. 271-291 [22]; 101 ("collective work" and "joint work"), 201(c), 202.

Chapter 7: Exclusive Rights and Their Limitations

*** Read statutory sections closely for this Chapter.**

§ 7.01[A][B] Overview

§ 7.02 The Reproduction Right

§ 7.04 The Distribution Right

12: R 2/21 pp. 435-37; 445-55; 479-89 [25]; §§ 106(1, 3); 108, 109; § 101 (relevant terms).

§ 7.01[C] Statutory (or "Compulsory") Licenses

§ 7.02[C] Reproduction in Phonorecords

§ 7.03 The Adaptation Right

13: T 2/26 pp. 437-40; 456-58; 464-73; 477 note 17 [18];
Ringtones [handout](http://paulohm.com) (paulohm.com)
§§ 106(2), 114(a-c), 115(a-c), 117; § 101 (relevant terms).

§ 7.05 The Public Performance Right

§ 7.06 The Public Display Right

14: R 2/28 pp. 494-508; 510-12 (don't read subsections [5] Synchronization Rights and [6] Digital network Transmissions; also, skip Notes on 512); 531-41 [29]; §§ 101 ("perform", "publicly"); 106(4, 6); 109(c); 110 (skim); 113.

Interlude

T 3/4 (no class)

15: T 3/4 **No Class (Attend April 9th EFF v. RIAA debate instead)**

Reading TBA (on website, paulohm.com).

No regularly-scheduled class. All students must attend the Wednesday, April 9th debate between the RIAA and EFF instead. Reading will be assigned. (Details under Course Methodology at start of syllabus, including alternative assignments for those who cannot attend the 4/9 debate). Be prepared to ask questions of the debaters.

Chapter 8: Infringement Actions

§ 8.03[B] Copying

16: R 3/6 pp. 599-616 [18]; § 501(a).

§ 8.03[C] Improper Appropriation

17: T 3/11 pp. 616-32; 639-46 [25] (Skip *Laureysens v. Idea Group Inc.* but read Notes following).

Chapter 9: Secondary Liability

§ 9.01 Contributory Infringement and Vicarious Liability

§ 9.02[A] Manufacturing and Distributing Copying Devices (Part One: *Sony*)

18: R 3/13 pp. 691-709 [19].

§ 9.02[C] Manufacturing and Distributing Copying Devices (Part Two: *Grokster*)

19: T 3/18 pp. 721-47 [27].

§ 9.04 Technological Protection Measures and Circumvention Issues (DMCA)

20: R 3/20 pp. 749-771; handouts [23+]; skim § 1201.

Spring Break: No Class T 3/25 and R 3/27.

Chapter 10: Fair Use and Affirmative Defenses

§ 10.01 Introduction

§ 10.02 The Fundamentals of Fair Use

21: T 4/1 pp. 773-99 [27]; § 107.

§ 10.03 Conceptual Issues in Fair Use

22: R 4/3 pp. 799-822 [24].

- § 10.03 Conceptual Issues in Fair Use (cont.)
- § 10.04[B] Fair Use and the Internet
- § 10.06 Other Affirmative Copyright Defenses

23: T 4/8 pp. 823-33; 849-58; 868-74 [28]; *Perfect 10 v. Google* handout (paulohm.com).

Chapter 11: Remedies and Preemption

- § 11.01 Remedies

24: R 4/10 pp. 875-87; 903-12 [23]; §§ 502-06.

- § 11.02 Preemption and State Law Remedies

25: T 4/15 pp. 917-30 [14]; § 301.

Revisiting Chapters 4, 5, 6: Formalities and Duration

- § 5.01[A][B] Duration (Eldred); Transfers of Rights

26: R 4/17 pp. 340-356; 291-302 (Stop after Note 9) [30]; §§ 201(d)-(e), 202, 204-05; 302-303, 304(a, b).

- § 5.02 Terminations of Transfers
- § 6.01 Publication
- § 6.02 Notice
- § 6.03 Deposit and Registration

27: T 4/22 pp. 356-62; 368-79 [19]; §§ 203.
Skim 383-85; 400-04; 411-16 [skim 14].

Review Sessions

Review sessions are tentatively scheduled for:

Thursday, 4/24, 1 pm (date of last scheduled class).

Tuesday, 4/29, 10 am.

Final is Thursday, 5/1, 8:15 am (Don't take my word for it! Double check!).