

COPYRIGHT SYLLABUS

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Course overview

What does it mean to own a novel, or a movie, or a work of art? American law seeks to answer this question by means of a federal statute, the Copyright Act. This code forms the core of our exploration of copyright law, supplemented by cases and other sources interpreting the statutory text. This law seeks to define, inter alia, the content of copyrightable subject matter; the scope of owners' rights; and affirmative defenses to copyright infringement.

The Copyright Act was passed pursuant to an express delegation of constitutional authority, authorizing Congress "to promote the progress of science and the useful arts by securing for limited times to authors ... the exclusive rights to their respective writings." This clause provides both a substantive limit on the scope of Congressional authority to pass copyright law as well as a lodestar for thinking about the aims of copyright itself. The statutory sections and cases you read will all be driven by the short-term goal of incentivizing authors to create and extract value from their works, but they will be colored by the long-term goal of promoting progress by maximizing creative production for the general good of society.

Class meetings

We will meet Mondays and Wednesdays from 10.30am-12pm via Zoom. Use this link: <https://uhlc.zoom.us/j/9709636568>. A week prior to the start of class, I will share the password you will need to join the Zoom meeting.

The default will be that all students are muted when the meeting begins. If you are on panel, it is required that you have both video and be ready to unmute yourself to participate throughout the portion of class when you are on call.

Even if you are not on panel, I ask that you keep the video on and audio muted throughout each class meeting. If you are facing a situation that renders it impossible or unreasonable to have video on, then you should let me know before class so that I know you will need to have your video off. You do not need to give me any details about why you need to have video off, but I do need at least five minutes advance notice so I can maintain a list.

Required texts

Joyce, et al., *Copyright Law* (11th ed. 2019). Other readings will be made available on TWEN as indicated on the syllabus. You are welcome to purchase either the electronic or looseleaf version of the Joyce text if you prefer.

Required texts

In the course readings listed below, the page numbers refer to the Joyce text. Be sure you have the **eleventh edition** of the text. Assigned selections from the U.S. Code are often in the text; if not, you can find them for free online. The U.S. Code is publicly available, including at <http://www.law.cornell.edu/uscode/text/17>. I will also make a full-text .pdf version of the Act available on TWEN. Readings available on TWEN are so indicated.

Class Preparation

The structure of class sessions will be dialogic (though not strictly Socratic), and your participation in the discussion is both required and encouraged. I expect students to carefully prepare the assigned materials.

Please note that the assignment for each class will include more than just cases. There will be detailed case notes from the Joyce text; statutory readings from the U.S. Code; and hypotheticals. I expect you to read each of these as carefully as the lead cases, and I will call on panelists to discuss these other sources just as I call on them to discuss cases.

Panel system

I will use a panel system rather than calling on students randomly. **I will distribute panel info about a week before classes start when the class roster is more stable.** There is a document on TWEN titled “Panel List” that lists what panel you are on and which panels are assigned to which days.

When you are on panel, I expect you to have prepared all the materials and to be able to converse about all of it, including cases, case notes, statutory sections, and hypotheticals. Failing to attend or to be fully prepared during your panel days may result in a grade reduction or a grade of “no credit.”

If for any reason you absolutely cannot be present on your assigned panel day, due to some unforeseen emergency, please let me know as far in advance as possible so I can make accommodations. This is important too for your fellow co-panelists, since absence from a panel increases the workload for them.

You are responsible for any and all material covered on the day when you are on panel. So if, for example, we begin a given class day by finishing a case or some hypotheticals from the previous day, you are responsible for that material, even though it was not the material originally planned for your assigned panel day.

Finally, everyone is most welcome to participate in every class. If you are not on panel and you have something to add or a question to ask, please don’t hesitate to do so.

Attendance

Attendance is mandatory and will be taken every class via a Google Form link that I will distribute during the first class. I will share a unique passcode for each class that you will enter along with your name into the Google Form to that your attendance is verified.

UHLC's Honor Code applies to this sign-in process. Sign in only your own name. As a default, I will opt not to use the Zoom instrumentality for verifying attention and attendance, but if either becomes a problem I will.

In light of the ongoing coronavirus pandemic, I will be flexible in applying the UHLC or ABA 20% attendance policies. That said, if you have an issue that will prevent you from attending class, **especially on a day when you are on panel**, please make every effort to give me advance notice.

Assigned hypotheticals

Our class discussions will focus largely, sometimes predominantly, on hypotheticals that are contained in files that are posted to TWEN. You are expected to prepare the hypotheticals associated with the material for which you are on panel just as carefully as you prepare the reading. If you don't prepare the hypotheticals, you are not prepared for class.

Examination and grading

The grade for this course will be primarily determined by a final examination. The examination will include at least an issue-spotter essay, and may also include multiple choice.

I may assign a grade of "no credit" in the event of poor class participation or unexcused absences.

Office hours & open access policy

I will hold office hours **TBD**. To join, use the same Zoom link you use to sign in for class. Office hours are presumptive open to all students, so I welcome all students to participate in these sessions. If, however you would like to arrange a one-on-one video meeting, please let me know and I will seek to set something up if we can make the timing work.

TWEN

I will maintain a course TWEN page. It will host course documents (syllabus, PowerPoint slides from class, hypotheticals) and provide discussion forums to which you are all invited to post topics related to course organization, scheduling, and other administrative matters as well as questions about material covered in class, recent developments in the law, and any other aspects of copyright itself. I will also often post information about class to the TWEN discussion boards. You are responsible for remaining up to date on any information posted to TWEN, so be sure to check it frequently, and consider setting up email alerts for new postings to the site.

Professionalism and expectations

My goal is to make Zoom-based classes approximate as closely as possible IRL classes. Hence my expectations are the same as in those classes. You should join the meeting on time; stay physically and mentally present throughout class **with your video on**; and be prepared when on panel.

***CAPS (this paragraph is now a requirement per Provost)**

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html.

Nomenclature

If you want me to refer to you in any particular way—including name pronunciation, nickname, gender pronoun, etc.—just tell me and I’ll respect any such preference.

Course Topics & Reading

I. Introduction

- 1.19 History and theories of copyright
§ 1.01 (3-5); § 1.03 (17-26); § 1.05 (38-42) (skim); § 1.06 (42-52)

II. Prerequisites for Copyrightability

- 1.24 Fixation
17 U.S.C. § 101 (defining “copies”, “created”, “fixed”, and “phonorecord”); § 102(a)
§ 2.01 (53-56, 63-72: Midway Mfg. Co. & nn.2, 4-8, 10, 12-13)
§ 7.02[D] (471-81: Cartoon Network & nn.1-10)

Fixation hypotheticals (TWEN)
- 1.26 Originality: authors and their writings
17 U.S.C. §§ 102(a)-(b)
§ 2.02[A]-[B] (72-88: Burrow-Giles Lithographic Co. & nn.1-2, 4-7, Bleistein & nn.3, 5-6, 11-12)
- 1.31 Originality hypotheticals (TWEN)

The merger doctrine
§ 2.02[D] (112-28: Baker & nn.1-8; Morrissey & nn.1-6)

III. Works of Authorship

- Literary works
17 U.S.C. § 101 (defining “computer program”, “literary work”, “useful article”); § 102(a)-(b)

Works of authorship hypo 1 (TWEN)
§ 3.01[A] (139-65: Miller & nn.1-2, 7-12)

- 2.2 § 3.01[A]-[B] (Apple, Hersey dissent, & nn.1-2, 4)
Works of authorship hypotheticals 2-5 (TWEN)
Other works of authorship
- 2.7 § 3.01[C] (171-76), § 3.01[D] (176-81)
§ 3.01[E] (181-203: Mazer, Star Athletica, & nn.3-15)
§ 3.01[F] (208-10, 215-20: legislative history & nn.1, 3-4, 8, 10-13)
Works of authorship hypotheticals 6-8 (TWEN)
- 2.9 Derivative works and compilations
17 U.S.C. § 101 (“collective work”, “compilation”, “derivative work”); § 103
§ 3.02[A]-[B] (221-37: Schrock & nn.1, 3-14)
§ 3.02[C] (238-50: Feist & nn.1, 3, 5-9)
Derivative works hypothetical (TWEN)

IV. Duration and Renewal

- 2.14 Duration
17 U.S.C. §§ 301 – 305
§ 5.01[A]-[B] (321-27, 336 (chart)); 337-38)
- 2.16 Duration hypotheticals (TWEN)
- 2.21 Renewal
§ 5.01[C] (341-52); renewal hypotheticals (TWEN)

V. Scope of Ownership and Transfer Rights

- 2.23 Works made for hire
§ 4.01[A]-[B] (255-80: CCNV & nn.3-4, 6-7, 10-11, 14-15)
Joint authorship (& joint ownership)
§ 4.01[C] (276-94: Childress & nn.1-8, 10-14)
Ownership hypotheticals 1-3 (TWEN)

- 2.28 Collective works
- § 4.01[D] (293-97)
- Ownership hypothetical 4 (TWEN)
- Transfers & recordation
- § 4.02[A]-[D] (297-311, 313-18: Effects Assocs. & nn.1-7, 11-13; “New Media”
 problem; recordation)
- Transfer & recordation hypotheticals
- 3.2 Termination of transfers
- § 5.02[A]-[E] (364-92: statutory termination of transfer provisions, Brumley
 & nn.1-9)
- 3.7 Milne, Mewborn summaries (TWEN); derivative works exception
- Termination hypotheticals (TWEN)

VI. Publication and Formalities

- 3.9 Publication and formalities
- § 6.01[A]-[C] (393-411: Creative House & nn.1-11); § 6.02[A]-[B] (411-22 &
 nn.1-15); § 6.03 (423-41) (skim)
- Publication hypotheticals (TWEN)

VII. Exclusive Rights and Their Limitations

- 3.21 Introduction & reproduction
- § 7.01[A]-[D] (447-56); § 7.02[A]-[B] (456-66: Filmation & nn.2-12); § 7.02[C]
 (467-71); § 7.02[D] (481-83: nn.11-15)
- Adaptation
- § 7.03[A]-[B] (484-99: Lee v. A.R.T. & nn.1-10)
- Exclusive rights hypotheticals 1-3 (TWEN)

- 3.23 Public distribution
- § 7.04[A]-[C] (499-514: London-Sire Records & nn.1-6, 10-14)
- Public performance & secondary transmission
- § 7.05[A] (534-46: Columbia Pictures & nn.1-16, 18; note on Performing Rights Societies)
- Exclusive rights hypotheticals 4-8 (TWEN)
- 3.28
- § 7.05[B] (553-67: Aereo; 573-74 nn.12-17: PROs)
- Public display, digital performance rights, and moral rights
- § 7.06[A]-[B] (578-90: Perfect 10 & nn.1-8, 12-14)
- § 7.07[A]-[B] (590-95)
- § 7.08[C] (604-07: nn.1-9; 616-21: nn.1, 5, 7, 11, 13)
- Exclusive rights hypotheticals 9-13 (TWEN)

VIII. Infringement Actions

- 3.30 Standing
- § 8.01 (625-28) (U.S. Code sections and legislative history)
- § 8.02[B] (641-49: Righthaven & nn.1-5, 7-9)
- Copying
- § 8.03[A]-[B] (655-65: Bright Tunes & nn.1-8; 670-73: nn.2-9)
- Infringement (copying) hypotheticals (TWEN)
- 4.4 Improper appropriation: § 8.03[C][1]-[2]
- Overview: 673-79
- Literary works: 680-85: Nichols
- PGS works: 685-92: Peter Pan & nn.1-12; 698-705: nn.1-11
- 4.6 Audiovisual works: Tetris Holding (TWEN)
- Musical works: Skidmore v. Led Zeppelin (TWEN): facts (8-15); Part II (22-23); Part IV.B (33-39)

Infringement (substantial similarity) hypotheticals (TWEN)

IX. Alternative Theories of Liability

4.11 Secondary copyright liability

§ 9.01[A]-[B] (757-65: Fonovisa & nn.1-4)

§ 9.02[A] (767-75: Sony & nn.1-7)

Secondary liability hypotheticals (TWEN)

4.13 § 9.02[C] (780-91: Grokster & nn.2-11)

Digital Millennium Copyright Act (DMCA) liability (& immunity)

§ 9.03[A]-[B] (791-96: DMCA § 512 summary)

DMCA hypothetical 1 (TWEN)

4.18 § 9.03[B] (796-811; Viacom & nn.1-11; notice & takedown provisions)

§ 9.04[A] (813-17: DMCA § 1201 summary & nn.1-4)

DMCA hypothetical 2 (TWEN)

X. Fair Use & Other Affirmative Defenses

4.20 Fair use

General principles & factor one

§ 10.01 (833-35); § 10.02[B] (840-59: Campbell & nn.1-14); Cariou v. Prince (TWEN); § 10.03[B] (881-85: nn.3-8)

Fair use hypotheticals (TWEN)

4.25 Actual and potential market effect

§ 10.03[C] (886-91 & nn.1-7), Texaco (TWEN)

Fair use in the digital environment

§ 10.04[B] (913-27: Authors Guild & nn.2-6)

Other affirmative defenses: § 10.06 (936-44)

Fair use hypotheticals (TWEN)

XI. Remedies

4.27 Damages, injunctive relief, and remedy anxiety

General principles & injunctive relief

§ 11.01[A]-[B][1] (945-61: Colting & nn.1-10, 13)

§ 11.01[B][2] (961-63)

Actual and statutory damages

§ 11.01[C][1] (972-75: nn.1-11)

§ 11.01[C][2] (980-86: nn.1-12)

§ 11.01[D] (986-89)

Remedies hypotheticals (TWEN)

TBD Review & Q&A