

Copyright Law

Spring 2021

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Class Hours: Tue/Thu 4-5:25PM, HH283/4

Office Hours: Weds 11AM-1PM, via Canvas link

GENERAL INFORMATION

This course will give you in-depth knowledge of the rules governing U.S. copyright protection, focusing on how copyright law evolves in the shadow of technological change and globalization. We will cover: theories of copyright protection; the ownership and co-ownership of copyrights; the exclusive rights to copy, distribute, perform, and display works; the legal status of adaptations, translations, new editions, and other transformations of copyrighted works; and the enforcement of copyrights, including against websites such as YouTube.

Workload

The ABA requires that you spend an average of at least six hours per week studying for this three-credit course. This is in addition to the three hours per week that we spend in class. The course reading assignments reflect this required workload.

Required Texts

1. Fromer & Sprigman, *Copyright Law: Cases & Materials* (2d ed. 2020)—open-source textbook available via <http://www.copyrightbook.org/> as a free download or low-cost paperback.
2. The U.S. Copyright Act, available at <https://www.copyright.gov/title17/title17.pdf>. The Act is very long, and we will cover only parts of it, so if you prefer to use a paper copy, I recommend that you print only the assigned readings, not the whole thing.
3. Supplemental materials I will post to the course Canvas website.

On the final exam, I will expect you to discuss cases by name and to cite subsections of the Act, so take notes accordingly.

Learning Outcomes

By the end of the course, you should be able to:

- Counsel clients on the substantive law of copyright, including eligible subject matter; the scope of exclusive rights; primary and secondary liability for infringement; and copyright limitations and exceptions.
- Plead both a prima facie claim of copyright infringement and key affirmative defenses to an infringement claim.
- Articulate opposing positions on key issues in current copyright policy debates.

Course Website

I will open the course Canvas website via <https://elearning.ufl.edu/> a few days before our first class. **You must check the course website frequently.** All course business will be conducted through Canvas: I will post all Zoom links, reading assignments, supplemental readings and audio clips, class slides, and course announcements there; you will turn in your midterm and essay there; and you can sign up for office hours slots there.

Office Hours

Please come to office hours! I am always happy to meet my students and get to know you better. I will hold office hours on Wednesdays at 11AM-1PM, via Zoom. You can find the link on Canvas. The first hour will be drop-in; the second hour is reserved for individual appointments, which you can sign up for on Canvas. If you cannot make it to office hours, I am happy to meet with you at another time—email me to set that up.

Under UF's policies to prevent the spread of Covid-19, I cannot meet with you in person this semester; we can only meet via Zoom.

GRADING

There will be a take-home midterm exam, graded on a pass/fail basis and discussed afterwards in class. Unless you fail the midterm, it will not affect your final grade. Think of it as a mandatory practice exam.

30% of your course grade will be based on a 1,500-word essay. I will release the essay prompt after you have completed the midterm, and you will need to turn in your essay before our second-to-last class.

70% of your course grade will be based on the final exam, which will be a three-hour open-book and open-note exam.

As discussed under "Course Policies" below, **I may lower your overall grade by one half-step (e.g., from A- to B+) based on inadequate preparation, participation, attendance, or punctuality.** Conversely, and very rarely, I may increase your overall grade by one half-step if I determine that your raw grade does not reflect your exceptional classroom contributions and engagement with the course.

This course adheres to the law school's mean and mandatory grade distributions. Those distributions and a chart of letter grades and grade point equivalents are set out at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Academic Honesty

All work you submit in this course must be your own. Academic honesty and integrity are fundamental values of the UF community. You must be sure that you understand the UF Student Honor Code set out at <https://sccr.dso.ufl.edu/policies/student-honor-code-student-conduct-code/>, which explains in detail what conduct constitutes plagiarism. Ignorance of the rules is not a defense. If you feel moved to discuss with your classmates the ideas we cover in the course, I'd be delighted—but you may not discuss what you plan to write on your essay, and you may not share drafts with anyone.

COURSE POLICIES

Attendance

You cannot learn the course material without attending class and actively participating in discussion. You are allowed three absences during the semester. If you miss more than three classes, I may lower your final grade by one half-step (e.g., from A- to B+). If you miss more than five classes, you will be dropped from the course. Missing a class to observe a holy day of your faith does not count as an absence, as long as you notify me in advance.

Attendance is measured by the sign-in website, using the code I will give out during each class. It is your responsibility to sign in. By signing in, you affirm that you are present for that class period. It is a violation of the Honor Code to falsely indicate that you were present in class, or to assist a classmate in such misrepresentation.

If you registered to take this course in person, you must attend class in person—choosing to attend on Zoom will count as an absence. The sole exceptions are if UF Health’s screening and contact tracing program has told you not to come to campus, or if you are experiencing Covid-like symptoms. In those situations, if you are well enough to attend class on Zoom, please do so, and notify me.

Preparation & Participation

To understand and contribute to the class discussion—and thus to learn the required material—you must carefully read and think about the assigned reading before each class. You may occasionally “pass” if I call on you and you are unprepared. But if you frequently fail to prepare properly for class or to participate in class discussion in good faith, I may lower your grade by one half-step (e.g., from A- to B+).

Punctuality & Deadlines

Punctuality is part of the professionalism expected of you as future lawyers. You must arrive at school or sign in to Zoom early enough to be ready to begin class on time. Arriving or logging in for class more than 10 minutes late counts as an absence. Similarly, you may not leave class early without advance permission from me. If you are frequently late for class or leave early without permission, or if you turn in your midterm or your essay late, I may lower your final grade by one half-step (e.g., from A- to B+).

Technology

I use small-group discussion problems to help you learn and apply the material. To allow this while maintaining social distancing, students taking the course in person must bring to each class a pair of headphones and a device on which you can access Zoom.

Zoom Conduct

If you attend class via Zoom, you must follow these protocols:

- Sign in at ufl.zoom.us with your UFL ID. If you do not, Zoom will not admit you to the class.
- Use your first and last name as your Zoom name, and indicate your pronouns.
- Log in from a quiet, stationary location.

- Absent extenuating circumstances, keep your webcam on. Please know it is more than understandable if children, pets, or other household members occasionally pass through. You are welcome to use a Zoom “virtual background,” but it must be neutral and professional—the law school provides several such options here: <https://www.law.ufl.edu/zoom-backgrounds>.
- Make sure you are well-lit and wearing appropriate clothing (see the note on headgear below).
- Use the “Raise Hand” function to ask a question or volunteer an answer.
- Mute your microphone unless you are speaking.
- You are welcome to use the chat function to, e.g., address tech issues—but keep it professional. Bear in mind that all chats (including the seemingly “private” chats sent to one other user) are recorded.

Headgear

Absent a medical need, you may not wear brimmed hats or sunglasses during class—it is already hard enough to see your faces under masks or on a tiny Zoom screen. Religious headcoverings are of course permitted.

SCHOOL & UNIVERSITY POLICIES

On-Campus Policies To Prevent the Spread of Covid-19

The university and law school have put many requirements in place to keep our community safe, including that you must wear a mask, use the designated seats, and keep six feet away from others at all times during class. **If you do not follow these requirements, you will be barred from the UF Law campus and the school will report your noncompliance to the relevant state board of bar examiners.**

You must use and comply with the UF Health screening and contact tracing systems. If UF Health tells you not to come to campus, you must attend class online unless you are not well enough to do so.

If you are experiencing Covid-like symptoms, please do not come to campus (or if you are already on campus, please leave immediately), and contact UF Health. If you are well enough to attend class online, you must do so.

Accommodations & Exam Delays

I am committed to making this course accessible to all. If you need accommodations for disabilities, the first step is to register with UF’s Disability Resource Center (<https://disability.ufl.edu/>). The Center will issue a letter setting out the accommodations you are entitled to, which you must present to Dean Mitchell, the Assistant Dean for Student Affairs. Dean Mitchell will then work with me as necessary to make sure I properly implement your accommodations. Please follow this procedure as early as possible in the semester. I cannot grant you any accommodation not reflected in your letter and approved by Dean Mitchell.

The law school’s policy on exam delays can be found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>. To preserve your anonymity, professors do not handle requests for exam delays—so if you need to delay taking the final, you must contact Dean Mitchell, not me.

Recording Class

You may not take, circulate, or post photos or videos of classroom discussions, regardless of whether you are taking the class online. If you break this rule, you will be reported to the law school's Honor Code Council and the University's Office of Student Conduct and Conflict Resolution. If you need to have class recorded for you due to a disability, you must go through the official accommodations process described above.

Course Evaluations

At the end of the semester, you will be asked to provide professional and respectful feedback about this course through an anonymous online evaluation. You can find guidance on how to give appropriate feedback at <https://gatorevals.aa.ufl.edu/students/>. You will get an email from GatorEvals when the evaluation opens, and I will allot time in one of our final class periods for you to complete it.

GETTING HELP

Law school can be stressful—even more so during a global pandemic. If you feel overwhelmed, please know that you are not alone. And if you are struggling, there is no need to try to “tough it out”—in fact, an important part of professionalism is knowing when to ask for help. UF provides many resources to help you through law school, including several options through UF's Counseling & Wellness Center. You can find a partial list here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/have-a-problem-we-can-help>. There is also a list on the course Canvas website. And please feel free to reach out to me.

Tentative Course Outline

The following table should give you a general idea of the course’s coverage and workload. This outline is only tentative; **you must check Canvas regularly for your reading assignments and deadlines.**

All readings are from the casebook (“CB”) and the Copyright Act (“Act”) unless otherwise indicated. Note that section 101 of the Act consists of a long list of definitions—when I assign you reading from that section, I will assign specific definitions, not the entire section.

	TOPIC & MAJOR CASES	READING
I: Introduction		
1	Copyright in Context	Course syllabus Act § 202 CB 1-16
II: The Subject Matter of Copyright Protection		
2	Fixation; Originality <i>Williams Elecs., Inc. v. Artic Int’l, Inc.</i> <i>Burrow-Giles Lithographic Co. v. Sarony</i> <i>Bleistein v. Donaldson Lithographing Co.</i> <i>Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.</i> <i>Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.</i>	Act §§ 101 (“fixed”) & 102 CB 17-22, 25-31, 32-42
3	Derivative Works; Compilations <i>L. Batlin & Son, Inc. v. Snyder</i> <i>Schrock v. Learning Curve Int’l, Inc.</i> <i>Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.</i> <i>Satava v. Lowry</i>	Act §§ 101 (“derivative work,” “compilation”) & 103 CB 44-59 & supplemental reading
4	The Idea/Expression Distinction <i>Baker v. Selden</i> <i>Erickson v. Blake</i> <i>Hoehling v. Universal City Studios, Inc.</i>	Act § 102(b) CB 59-75
5	The Useful Article Doctrine <i>Mazer v. Stein</i> <i>Star Athletica, LLC v. Varsity Brands, Inc.</i> <i>Silvertop Assocs., Inc. v. Kangaroo Mfg. Inc.</i>	Act §§ 101 (“pictorial, graphic and sculptural works,” “useful article”), 102(a), & 113(a)-(c) CB 75-76, 78-99
III: Authorship & Ownership		
6	Authorship <i>Lindsay v. The Wrecked and Abandoned Vessel R.M.S. Titanic</i> <i>Garcia v. Google, Inc.</i> <i>Erickson v. Trinity Theatre, Inc.</i> <i>Aalmuhammed v. Lee</i> <i>Cnty. for Creative Non-Violence v. Reid</i> <i>Avtec Systems, Inc. v. Peiffer</i>	Act §§ 101 (“joint work,” “work made for hire”) & 201(a)-(b) CB 143-68
IV: The Statutory Rights of Copyright Owners		
7	Reproduction Right (Copying in Fact and Classic Cases) <i>Three Boys Music Corp. v. Bolton</i> <i>Selle v. Gibb</i> <i>Nichols v. Universal Pictures Corp.</i> <i>Arnstein v. Porter</i>	Act §§ 101 (“copies,” “phonorecords”), 106, 117, 405(b) CB 219-27, 230-31, 235-43

	TOPIC & MAJOR CASES	READING
8	Reproduction Right (Contemporary Cases) <i>Steinberg v. Columbia Pictures Indus., Inc.</i> <i>Boisson v. Banian, Ltd.</i> <i>Cavalier v. Random House, Inc.</i> <i>Rentmeester v. Nike, Inc.</i>	Act § 106 CB 243-53, 257-74
9	Right To Prepare Derivative Works; Copyright in Characters <i>Warner Bros. Ent. Inc. v. RDR Books</i> <i>Mirage Editions, Inc. v. Albuquerque A.R.T. Co.</i> <i>Lee v. A.R.T. Co.</i> <i>Lewis Galoob Toys, Inc. v. Nintendo of Am., Inc.</i> <i>Warner Bros. Pictures, Inc. v. CBS, Inc.</i> <i>DC Comics v. Towle</i>	Act § 106 CB 275-303
10	Distribution (and Importation) Rights <i>Bobbs-Merrill Co. v. Straus</i> <i>Capitol Records, LLC v. ReDigi Inc.</i> <i>Kirtsaeng v. John Wiley & Sons, Inc.</i>	Act §§ 106, 109(a)-(b)(2) & (d), 108, 501(a), 602 CB 326-45
11	Right of Public Performance; Right of Public Display <i>Columbia Pictures Indus., Inc. v. Redd Horne, Inc.</i> <i>Cartoon Network LP v. CSC Holdings, Inc.</i> <i>ABC, Inc. v. Aereo, Inc.</i> <i>Perfect 10, Inc. v. Amazon.com, Inc.</i>	Act §§ 101 (“display,” “perform,” “publicly,” “transmit,” “digital transmission”), 106, 109(c), 110 CB 345-70
12	Moral Rights <i>Gilliam v. ABC, Inc.</i> <i>Dastar Corp. v. Twentieth Century Fox Corp.</i> <i>Castillo v. G&M Realty L.P.</i>	Act §§ 101 (“work of visual art”), 106A CB 304-26
13	Copyrights in Music <i>VMG Salsoul, LLC v. Ciccone</i> <i>Bridgeport Music, Inc. v. Dimension Films</i>	Act §§ 101 (“phonorecords,” “sound recordings”), 106, 114(a)-(c), 115(a)-(b) CB 370-94 and supplemental reading
14	Midterm Review	Take the midterm at home and turn in via Canvas
V: The Fair Use Defense		
15	Fair Use in Traditional Media <i>Harper & Row, Publishers, Inc. v. Nation Enters.</i> <i>Campbell v. Acuff-Rose Music, Inc.</i> <i>Bill Graham Archives v. Dorling Kindersley Ltd.</i> <i>Cariou v. Prince</i>	Act § 107 CB 394-423 & supplemental reading
16	Fair Use: Market Failure and Market Effect <i>Sony Corp. v. Universal City Studios, Inc.</i> <i>Am. Geophysical Union v. Texaco Inc.</i> <i>Núñez v. Caribbean Int’l News Corp.</i>	Act § 107 CB 432-56
17	Fair Use in Software and Technology <i>Lotus Dev. Corp. v. Borland Int’l, Inc.</i> <i>Sega Enters. Ltd. v. Accolade, Inc.</i> <i>Perfect 10, Inc. v. Amazon.com, Inc.</i> <i>The Authors Guild, Inc. v. Google, Inc.</i>	Act §§ 101 (“computer program,” “literary work”), 107 CB 106-11, 466-73, 480-96

	TOPIC & MAJOR CASES	READING
VI: Liability for Copyright Infringement		
18	Volition; Secondary Liability <i>Religious Tech. Ctr. v. Netcom On-Line Commc'n Serv.</i> <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 Int'l Serv. Ass'n</i>	Act § 106 CB 497-518
19	OSP Liability and Safe Harbors <i>Viacom Int'l, Inc. v. YouTube, Inc.</i> <i>Lenz v. Universal Music Corp.</i>	Act §§ 512(c), (f), (m) CB 518-31, 536-43
20	Liability of Device Manufacturers <i>Sony Corp. v. Universal City Studios, Inc.</i> <i>A&M Records, Inc. v. Napster, Inc.</i> <i>MGM Studios Inc. v. Grokster, Ltd.</i>	CB 543-64
VII: Copyright Formalities & Transfers		
21	Formalities; Duration <i>Estate of Martin Luther King, Jr., Inc. v. CBS, Inc.</i>	Act §§ 302, 303, 304(a)-(b) CB 169-87
22	Renewals and Terminations of Transfers <i>Eldred v. Ashcroft</i> <i>Stewart v. Abend</i>	Act §§ 203, 304(c)-(d) CB 187-99, 207-17
23	Copyright Licensing <i>Asset Marketing Sys., Inc. v. Gagnon</i> <i>Rey v. Lafferty</i> <i>Vernor v. Autodesk, Inc.</i>	Act §§ 101 ("collective work," "transfer of copyright ownership"), 201(c)-(d), 202, 204, 501(b) CB 627-47
VIII: Deterrence & Technological Protections		
24	Copyright Litigation and Remedies <i>Christopher Phelps & Associates, LLC v. Galloway</i> <i>Bouchat v. Baltimore Ravens Football Club</i> <i>Frank Music Corp. v. Metro-Goldwyn-Mayer Inc.</i> <i>Capitol Records, Inc. v. Thomas-Rasset</i>	Act §§ 410, 411, 412, 502-505 CB 565-91
25	Technological Protections for Copyrighted Works <i>Universal City Studios, Inc. v. Reimerdes</i> <i>Chamberlain Group, Inc. v. Skylink Techs., Inc.</i> <i>Lexmark Int'l, Inc. v. Static Control Components, Inc.</i>	Act §§ 1201(a)-(j), 1202(a)-(c) CB 599-625
26	Review Session	Review your notes/outline and submit review questions