

Copyright Law

Spring 2022

Prof. S.L. Bishop, s.bishop@law.ufl.edu

Class Hours: Tue/Thu 4:30-5:55PM, HH270

Office Hours: Weds 2PM-3PM (individual); 3PM-4PM (drop-in)

GENERAL INFORMATION

This course will give you an in-depth understanding of the rules governing U.S. copyright protection, focusing on how copyright law evolves in the shadow of technological change. We will cover: theories of copyright protection; the ownership, co-ownership, and transfer of copyrights; the exclusive rights to copy, distribute, perform, and display works; the legal status of parodies, guides, adaptations, reinterpreted, and other transformations of copyrighted works; and the enforcement of copyrights, including against online service providers such as YouTube and Twitch.

Required Texts

1. Fromer & Sprigman, *Copyright Law: Cases & Materials* (3d ed. 2021)—open-source textbook available [here](#) as a free download or low-cost paperback.
2. The U.S. Copyright Act, available [here](#). The Act is very long, and we will cover only parts of it—so if you prefer to use a paper copy, I recommend you print only the assigned readings.
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.

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.

Course Website

I will open the course Canvas website before our first class. **You must check the course website frequently.** All course business will be conducted through Canvas: I will post all reading assignments, supplemental readings, audio and video clips, Zoom links, 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 2PM-4PM. The 2PM-3PM hour will be reserved for individual appointments, which you must sign up for in advance via Canvas; the 3PM-4PM hour will be drop-in. If you cannot make it to office hours, I am happy to meet at another time—email me to set that up.

GRADING

There will be a take-home midterm exam, graded pass/fail and discussed together in class. Unless you fail the midterm or turn it in late, it will not affect your final grade. Think of it as a required practice exam.

30% of your course grade will be based on an essay (1,600-word limit), which will be due before our 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 “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 grading policies. Those policies and a chart of letter grades and grade point equivalents are set out [here](#).

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](#), 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 that we cover in the course, that’s wonderful—but **you may not discuss what you plan to write on your essay and you may not share drafts with anyone.**

COURSE, SCHOOL, & UNIVERSITY POLICIES

Policies To Prevent the Spread of Covid-19

The UF Student Health Center offers free Covid-19 vaccines. **The law school strongly encourages all students to become vaccinated and get a booster shot if you have not already done so.** If you need an excused absence to get your shot or to recover from post-shot symptoms, I will happily grant one.

At the time of drafting this syllabus, you are encouraged but not required to wear a mask while indoors at the law school, including throughout class. As the Covid-19 pandemic develops, requirements may change. It is your responsibility to stay up to date with any requirements and to follow them conscientiously. If you refuse to do so, I will have you removed from the course.

If you have been exposed to Covid-19 or are experiencing Covid-like symptoms, please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are permitted to return to campus.

Attendance & Punctuality

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 solely by signing in at the beginning of class. It is your responsibility to make sure you sign in. By signing in, you affirm that you were present during the entirety of that class period. It is a serious violation of the Honor Code to falsely indicate that you were present in class or to help a classmate misrepresent their attendance.

I plan to provide Zoom links and recordings for every class session so that students who are sick or isolating due to Covid can follow along. Note, however, that this is not a remote learning option: You are expected to attend class in person, and choosing to follow along on Zoom will count as an absence.

Punctuality is part of the professionalism expected of you as future lawyers. Please be in your seat and ready to begin class at the scheduled time. Arriving more than 10 minutes late or leaving class early without my prior permission will count as an absence.

Preparation, Participation, and Professionalism

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+).

As a future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. I encourage you to speak thoughtfully, listen carefully, and commit to examining your own values and assumptions. All students have the right to be

treated with respect by their instructors and classmates. As part of my commitment to teaching and to serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

Preferred Names & Pronouns

I would like to use your preferred name and the pronouns that reflect your identity. I use the Canvas display names to create my course roster. Please make sure that your Canvas display name reflects your preferred name and correct pronouns if possible; or, if Canvas will not display your information correctly, please e-mail me and let me know how you'd like to be addressed in class.

Accommodations

I am committed to making this course accessible to all. Reasonable accommodations ensure equal opportunity for students with disabilities. If you need accommodations, the first step is to register with UF's [Disability Resource Center](#). 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 to make sure I properly implement your accommodations. Please follow this procedure as early as possible in the semester. **Please understand that I cannot grant you any accommodation not reflected in a letter and approved by Dean Mitchell.**

The law school policy on exam delays and accommodations can be found [here](#).

Recording Classes

Under state law, you may record video or audio of class lectures only for the following narrow purposes: (1) for your sole, personal educational use; (2) in connection with a complaint to the university; or (3) as evidence in, or in preparation for, a criminal or civil proceeding. Recording for any other purpose is prohibited. Moreover, you may not publish, share, or transmit any part of your personal recording to anyone else—including to another student in the course—without my written permission. If you do so without my written consent you may be subject to civil liability, as well as to discipline under the UF Student Honor Code and Student Conduct Code.

Course Evaluation

At the end of the semester, you will be expected to provide professional and respectful feedback about this course through an online evaluation. You can find guidance on how to give appropriate feedback [here](#). When the evaluation opens, you will receive an email from GatorEvals with the link, which will also appear on Canvas. I will allot time during one of our class periods for you to complete your evaluation.

GETTING HELP

Law school can be stressful—even more so during a global pandemic. If you feel overwhelmed, there is no need to try to “just deal with it”—in fact, an important part of professionalism is knowing when to ask for help. As a first step, you can reach out to the law school's dedicated counselor, Ritzy Ettinger, by email at rettinger@ufl.edu or by telephone via the Student Life number—call 352-273-0620 and ask to be transferred to her. You should also feel free to reach out to the Office of Student Affairs or to me.

Tentative Course Schedule

The following table is designed to give you a sense 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.

CLASS	TOPIC & MAJOR CASES	READING
I: Introduction		
1	Copyright in Context	Course syllabus U.S. Const., Art. I, § 8, cl. 8 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 (i.e., skip <i>Alfred Bell</i> and <i>Cartoon Network</i> , but read the notes at the end of each section).
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>	Act §§ 101 (“derivative work,” “collective work,” “compilation”) & 103 CB 44-59
4	The Idea/Expression Distinction <i>Baker v. Selden</i> <i>ATC Distrib. v. Whatever It Takes Transmission & Parts</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,” “work of the United States government,” “useful article”), 102(a), 105(a) & 113(a)-(c) CB 75-77, 79-100
III: Authorship & Initial Ownership		
6	Authorship & Initial Ownership <i>Lindsay v. The Wrecked and Abandoned Vessel R.M.S. Titanic</i> <i>Garcia v. Google</i> <i>Aalmuhammed v. Lee</i> <i>CCNV v. Reid</i>	Act §§ 101 (“joint work,” “work made for hire”) & 201(a)-(c) CB 137-45, 147-57
IV: The Six(ish) Statutory Rights of Copyright Owners		
7	Reproduction Right I: Copying in Fact and Classic Cases <i>Three Boys Music Corp. v. Bolton</i> <i>Selle v. Gibb</i> <i>Gayle v. HBO</i> <i>Nichols v. Universal Pictures Corp.</i>	Act §§ 101 (“copies,” “phonorecords”), 106, 501(a) CB 213-21, 225-33 Audio clips on Canvas

CLASS	TOPIC & MAJOR CASES	READING
8	Reproduction Right II: 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>	CB 238-48, 251-67
9	Distribution (& Importation) Right <i>Bobbs-Merrill Co. v. Straus</i> <i>Capitol Records, LLC v. ReDigi Inc.</i> <i>Kirtsaeng v. John Wiley & Sons, Inc.</i>	Act §§ 109, 602 CB 270-88
10	Right To Prepare Derivative Works & Copyright in Fictional 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>Daniels v. Walt Disney Co.</i>	Review Act §§ 101 (“derivative work”), 103 CB 289-305, 309 (section intro only), 312-17
11	Rights of Public Performance & Public Display <i>Cartoon Network LP v. CSC Holdings, Inc.</i> <i>ABC v. Aereo, Inc.</i> <i>Perfect 10, Inc. v. Amazon</i>	Act §§ 101 (“display,” “perform,” “publicly,” “transmit,” “digital transmission”), 109(c), 110 CB 339-40, 22-25, 344-64
12	Moral Rights & VARA <i>Castillo v. G&M Realty L.P.</i> <i>Mass. MoCA v. Buchel</i>	Act §§ 101 (“work of visual art”), 106A, 113(d) CB 317-18, 329-39 Supplemental case on Canvas
13	Copyright & the Music Industry <i>VMG Salsoul, LLC v. Ciccone</i> <i>Bridgeport Music, Inc. v. Dimension Films</i>	Act §§ 101 (“phonorecords,” “sound recordings”), 106(4) & (6), 114(a)-(c), 115(a)-(b) CB 364-85 Supplemental handout and audio clips on Canvas
14	Midterm Review (Zoom class)	Take the midterm at home and turn in via Canvas
SPRING BREAK		
V: The Fair Use Defense		
15	Fair Use I: Foundational Cases <i>Harper & Row, Publishers, Inc. v. Nation Enters.</i> <i>Sony Corp. v. Universal City Studios, Inc.</i> <i>Campbell v. Acuff-Rose Music, Inc.</i>	Act § 107 CB 389-418 Audio clips on Canvas
16	Fair Use II: Transformativeness <i>Bill Graham Archives v. Dorling Kindersley Ltd.</i> <i>Perfect10, Inc. v. Amazon</i> <i>Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith</i>	CB 419-428, 463-67, 482-84 Supplemental case on Canvas
17	Fair Use III: Copyright & Fair Use in Software & Technology <i>Lotus Dev. Corp. v. Borland Int’l, Inc.</i> <i>Google v. Oracle</i>	Act §§ 101 (“computer program,” “literary work”), 117 CB 101-06, 118-29, 484-504

CLASS	TOPIC & MAJOR CASES	READING
VI: Copyright Formalities & Transfers		
18	Intro to Formalities; Publication & Duration <i>Estate of Martin Luther King, Jr., Inc. v. CBS, Inc.</i>	Act §§ 101 (“publication”), 302, 303, 304(a)-(b), 305, 411(a), 412 CB 163-75, 177-83
19	Renewals of Copyright & Terminations of Transfers <i>Stewart v. Abend</i>	Act §§ 203, 304(c)-(d) CB 201-11
20	Copyright Licensing <i>Asset Marketing Sys., Inc. v. Gagnon</i> <i>Vernor v. Autodesk, Inc.</i>	Act § 101 (“transfer of copyright ownership”), 109(a) & (d), 201(d), 202, 204(a) CB 641-47, 654-60 Bring to class the copyright terms from any ToS or EULA you have recently agreed to
VII: Liability for Copyright Infringement		
21	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</i> <i>Perfect 10, Inc. v. VISA</i>	Review Act § 106 CB 505-27
22	OSP Liability & Safe Harbors <i>Viacom Int’l, Inc. v. YouTube</i> <i>Lenz v. Universal Music Corp.</i>	Act §§ 512(c), (f), (g), & (m) CB 527-40, 545-52 Video clip linked on Canvas
23	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 552-73
24	Remedies for Copyright Infringement <i>Christopher Phelps & Assocs., LLC v. Galloway</i> <i>Davis v. Gap, Inc.</i> <i>Frank Music Corp. v. MGM</i> <i>Bouchat v. Baltimore Ravens Football Club</i>	Act §§ 412, 502, 503(a)(1) & (b), 504, 505 CB 580-605
25	Asynchronous class: work on essay and prepare for review session	
26	Review Session (Zoom class)	Review your notes/outline and submit review questions