



**Copyright Seminar** (Law 539, §1002)

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1. **PREREQUISITES.** The Intellectual Property Law course is a prerequisite.
2. **COURSE OBJECTIVES.** I have two primary course objectives, First, I want to explore some copyright law topics in more detail than they received in the IP course. Second, I want you to publish a paper, and the course will provide some resources to help you accomplish this goal.
3. **INFORMATION SHEET.** No later than January 13, 2006, please email me your resume and your answers to the following questions:
  - What type of job are you seeking after graduation?
  - What other IP courses have you taken previously?
  - Why are you taking this course?
  - What copyright law topics interest you the most?
  - What substantive papers related to intellectual property have you written in law school? Are you considering recycling an existing paper for the paper in this course?
4. **SESSIONS.** We meet from 3:00 to 4:50 pm every Monday afternoon between January 23 and April 24, excluding March 13 (Spring Break). In addition, you are required to attend the Nies lecture, tentatively scheduled for April 6 at 5 pm.
5. **TEXTS.**
  - Course packet from PrintWorld.
  - The [Copyright Act](#) (the supplement from your IP class will suffice).
  - Eugene Volokh, *Academic Legal Writing* (2d edition 2005; ISBN 158778792X).
6. **GRADING.**
  - a. **Attendance/Participation.** 40% of your final grade is based on attendance and participation.

Regarding attendance, I expect you to attend *every* class, so every unexcused absence will cost you points. I will grant excused absences very sparingly, usually only for health issues, family emergencies or extraordinary opportunities to learn more about copyright law.

For participation, I will subjectively evaluate your contributions to class dialogues and comments to your peers about their papers. Constructive comments about your peers' presentations or

papers will be very highly weighted. However, disrespect or inattention during a peer's presentation, failure to provide timely comments to a peer's paper, or malicious comments to your peers about their presentations or their papers, will hurt your participation grade.

**b. Paper/Presentation.** 60% of your final grade is based on a paper and presentation about a copyright law topic. You can choose either a practitioner or an analytical topic.

### *Practitioner Paper*

You can write a descriptive paper on a copyright law topic. This paper should be tailored to a legal practitioner audience (although a paper written for non-lawyer audiences may also be acceptable). Your goal is to publish your paper in a periodical read by your target audience. As an incentive to publish your paper, you will get an "A" on your paper/presentation if you provide me (prior to May 8, 2006) written notice that your paper has been accepted for publication at an approved periodical.

To write this paper, I recommend the following steps:

Step 1: Pick a topic.

Step 2: Research target periodicals and their submission criteria.

Step 3: Once you've found some target publications, submit them to me for approval. I can reject targeted periodicals in my sole discretion.

Step 4: Write the paper.

Step 5: Submit the paper to your target periodicals.

### *Analytical Paper*

Instead of writing a descriptive paper, you can write an analytical paper targeted for the writing competitions. Because this paper will be more time-consuming, I can arrange for an extra 1 unit directed research that will be graded identically to the grading for this course.

To write this paper, I recommend the following steps:

Step 1: Pick a topic.

Step 2: Research writing competitions. To do this, review the book *How to Pay for Your Law Degree* in the library.

Step 3: Designate a writing competition as your primary target. I can veto any designation in my sole discretion. Once we've agreed upon a writing competition, I will grade your paper using the competition's criteria.

Step 4: Write the paper.

Step 5: Submit the paper to writing competitions (including your target).

Two writing competitions to keep in mind (but you cannot designate either of these as your target). First, the Wisconsin State Bar IP Section runs an [annual writing competition](#) open only

to Marquette and UW students. You should plan on submitting your paper to this competition. The deadline is typically April 30 (see page 11 for more details).

Second, Marquette participates in ASCAP's [Nathan Burkan competition](#) for papers on copyright law topics. I have included the submission criteria in your reader (page 8). Prof. Calboli and I designate first and second place winners among Marquette student papers, which are then forwarded to the national competition. While the school competition will be open to all students, there is a good chance that the winners will come from this course.

Although it's doubtful that we'll hear in time, any paper that wins recognition from a writing competition (other than the Wisconsin State Bar IP Section and the Nathan Burkan) prior to May 8, 2006 will automatically earn an "A" for the paper/presentation grade.

### *Topic Selection*

Topic selection is critical to writing a good paper. Pick an uninspired topic, and no one will want to read your paper no matter how well it's executed. Pick a good and interesting topic, and your paper will stand out from the pack.

It usually takes some research to find a good topic. You may find it advantageous to research topics over the winter break. Also, I've identified some possible topics in Appendix A. For more help on topic selection, read Volokh's book.

Some parameters on topic selection:

- NO CASE NOTES! These papers rarely enlighten a reader or add much to the dialogue.
- NO TOPICS RELATING TO GROKSTER OR INTERNET MUSIC DISTRIBUTION unless you are absolutely, positively convinced that you have something new and provocative to say. Otherwise, these topics have been written to death.
- "Current events" topics are very high-risk for three reasons:
  - The current event might be long-forgotten by the time the paper is published.
  - Current events topics tend to change very quickly, so the paper needs constant updating or may be mooted by a new development.
  - Students across the nation love to gang-tackle current events topics. Therefore, even if no published papers address the topic today, there could very well be a glut of papers by the time yours is evaluated or published. This makes your topic look unoriginal and uninspired.

For these reasons, I discourage you from picking topics relating to Google Book Search.

- I must approve all topics, and all topics are first-come, first-served.
- I will consider allowing you to recycle an existing paper on an individually-negotiated basis.

### *Presentation and Feedback*

In addition to the paper, you will make a brief (~15 minute) presentation of your work. After your presentation, the class will briefly discuss your presentation. There are two principal purposes of this presentation: (1) the presentation ensures that the community learns from your

efforts, and (2) the presentation will give you an opportunity to get feedback on your paper and your arguments so that you can improve them. All paper presentations will be open to the public.

*Feedback.* Each presenter must upload a draft of his/her paper to TWEN (the “Discussion/Paper Drafts” forum) no later than the Friday before the presentation. By EOD Sunday after a paper’s presentation, all other students are required to deliver written constructive feedback on that paper to the author. If you email your feedback to the author, please cc me and include in the subject line “Copyright Course: Comments to [peer’s name] paper.” If you mark up a hard copy of the paper, please put a copy of your mark-up in my in-box.

As an author, you will get better feedback from your peers if your paper is nearing completion by the time your peers see it, but I don’t expect you to have a finished product at that time.

As a commenter, depending on the state of your peer’s draft, line-item comments may or may not be helpful. In contrast, authors always appreciate conceptual comments about persuasiveness of the arguments or sources or ideas to pursue. Delivering thoughtful and productive comments to your peer’s work is an essential part of this course, and late or malicious comments on your peers’ work will be heavily penalized.

*Drafts.* If you want, I will comment on rough drafts prior to the final submission. I encourage you to submit those drafts with enough time for me to read and then for you to make changes based on the comments before the next deadline.

*Paper Submissions.* Submit all papers through the TWEN tab entitled “Assignment Drop Box.”

*Deadlines.* I expect you to honor all deadlines faithfully, but two deadlines could have extra consequences if blown. First, you need to post your paper to TWEN sufficiently in advance of your presentation so that your peers can read it beforehand if they want. Therefore, the Friday deadline is *firm*, and failure to meet that deadline will be discourteous to your peers, will annoy me and could significantly reduce your paper/presentation grade. Second, failure to turn in your final paper by May 8 at 4 pm could result in a zero for your entire paper/presentation grade.

**7. TWEN. YOU MUST REGISTER FOR THE COURSE’S TWEN SITE NO LATER THAN 5:00 PM JANUARY 18, 2006 OR I MAY DROP YOU FROM THE COURSE.**

## 8. SCHEDULE/DEADLINES [SUBJECT TO REVISION]

<b>Date</b>	<b>Class Topic</b>	<b>Reading/Deadlines</b>
Jan. 11	N/A	During the break, please read Volokh's <i>Academic Legal Writing</i> book (I don't plan to specifically discuss in class)
Jan. 13	N/A	DEADLINE: Turn in information sheet/resume
Jan. 18	N/A	DEADLINE: Register for TWEN by 5:00 pm
Jan. 23	Introduction and copyright law recap	<a href="#">Copyright Law Basics</a> handout (p. 13)
Jan. 30	Copyright policy rationales	Barlow, the <a href="#">Economy of Ideas</a> (not in reader—get online) <a href="#">Eldred v. Ashcroft</a> (p. 26) <a href="#">Feist Pubs. v. Rural Telephone Service</a> (p. 87)
Feb. 6	Idea/expression dichotomy and infringement standards	<a href="#">Lotus Development v. Borland Int'l</a> (p. 100) <a href="#">Castle Rock Entertainment v. Carol Publishing Group</a> (p. 116) <a href="#">Satava v. Lowry</a> (p. 123) <a href="#">Ets-Hokin v. Skyy Spirits</a> (p. 130) <a href="#">Bridgeport Music v. Dimension Films</a> (p. 132)  DEADLINE: Select paper topic and targeted periodical/writing competition
Feb. 13	Fair use	<a href="#">Fair use cheat sheet</a> (p. 143) <a href="#">Castle Rock Entertainment v. Carol Publishing Group</a> (p. 144) <a href="#">Sega v. Accolade</a> (p. 152) <a href="#">Princeton University Press v. Michigan Document Services</a> (p. 168)
Feb. 20	Factual databases	<a href="#">CDN v. Kapes</a> (p. 200) <a href="#">Southco v. Kanebridge</a> (p. 206)
Feb. 27	Anti-circumvention	<a href="#">Lexmark v. Static Control</a> (p. 225) <a href="#">Chamberlain Group v. Skylink Technologies</a> (p. 243)
Mar. 6	Online music	<a href="#">BMG Music v. Gonzalez</a> (p. 262) <a href="#">MGM v. Grokster</a> (p. 268)
Mar. 20	Presentations 1, 2, 3	Student papers for these presentations
Mar. 27	Presentations 4, 5, 6	Student papers for these presentations
Apr. 3	Presentations 7, 8, 9	Student papers for these presentations

Apr. 6	Honorable Helen Wilson Nies Memorial Lecture  <i>Guest speaker:</i> Prof. Michael Geist, University of Ottawa	Tentatively scheduled for 5 pm, Room 325
Apr. 10	Copyright practice issues [registration, notice, duration, licensing, diligencing, damages]  <i>Guest speaker:</i> Gail Lione, Harley-Davidson	<a href="#">Copyright Office Circular #1</a> (p. 318) <a href="#">New York Times v. Tasini</a> (p. 330) Copyright licensing handout (p. 351)
Apr. 17	Presentations 10, 11, 12	Student papers for these presentations
Apr. 24	Presentations 13, 14, 15	Student papers for these presentations
Apr. 30	N/A	DEADLINE: Likely deadline for the State Bar IP Section Writing Competition (see page 11)
May 8	N/A	DEADLINE: Final paper draft due 4 pm.  Last day to submit evidence of paper being accepted for publication or winning writing competition.  Deadline to submit your paper to me for the Nathan Burkan competition (please submit extra copies complying with the rules—see page 8)

## 9. CONTACT INFORMATION.

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In all emails to me related to this course, please put the words “Copyright Course” in the subject line so that I can keep my courses straight (and avoid unintentional deletion as spam).

More course-related materials, including an electronic copy of this syllabus, are available at <http://www.ericgoldman.org>.

## **Appendix A**

### Possible Topics

*Note:* This list is not exhaustive but might give you ideas. First come, first served.

Copyright implications of RSS feeds and Creative Commons licenses as applied to blog aggregators

Parental liability for copyright infringement by their children

- alternative/complement: computer owner's liability for copyright infringement committed by users of the computer

Copyright and piercing the corporate veil (i.e., copyright liability of board members, stockholders and employee/officers for corporate copyright infringement)

Contributory/vicarious copyright infringement for publishing passwords that access password-protected copyrighted works

Copyright ownership of joint/guest blogs

Status report on 17 USC 512(f) cases

17 USC 1201 as an anti-competition tool

Infringement for bundling software with P2P file-sharing or delivering ads via P2P file-sharing

Copyright protection for styles/genres of content