



Intellectual Property (Law 388)
Professor Eric Goldman
Spring 2015

1. SESSIONS. The course meets in Bannan 236 on Mondays and Wednesdays 10:30-11:45 am from January 7 to April 22, except we will not meet on January 19 (MLK Day) or March 2 and 4 (Spring Break), and we will meet on February 17 rather than February 16. I have scheduled an optional review session for April 27, noon to 1 pm, in Bannan 237, although I may cancel the session if we collectively decide it's not helpful.

2. BOOKS. The casebook is Merges, Menell & Lemley, *Intellectual Property in the New Technological Age*, Sixth Edition (ISBN 978-1454820093). The statutory compilation is Boyle & Jenkins, *Intellectual Property: Law & The Information Society: Selected Statutes & Treaties* (2014), which I've made available in Camino as a free PDF. I've also posted my own short course supplement PDF to Camino.

3. READINGS (subject to change). I will announce the next week's readings at the end of each Wednesday's class session.

Introduction and Overview (approx. 1 week): 1-31 and pages 2-13 of my supplement

Trade Secrets (approx. 2 weeks): 33-57, 60-63, 66-75, 83-87, 89-112 + page 14 of my supplement, 117-122 [including problems 2-1 and 2-2]

Patents (approx. 4 weeks): pages 15-25 of my supplement, 123-139, Alice v. CLS (pages 26-32 of my supplement), 177-182, 185-201, 205-211, 224-232, 234-247, 252-278, 284-313 [including problem 3-6], 323-328, 370-389, 399-409, 415-427

Copyright (approx. 4 weeks): 429-466, 480-522, 526-555 [including problem 4-28], 572-651 + page 33 of my supplement, 682-684, 751-761 [including problem 4-24]

Trademarks (approx. 2½ weeks): 763-845 and page 34 of my supplement, 876-904, Pillsbury v. Milky Way (page 35 of my supplement), 953-982

Publicity Rights (approx. ½ week): 1064-1096

We probably won't do any casebook problems other than the ones specified above, so feel free to skim the others.

4. GRADING.

Attendance. In-class material and discussions are crucial to this course, so I expect you to attend every class session. However, because our lives are unpredictable, you have five "free passes" for unexcused absences. Let me know about an upcoming absence only if you are requesting that

I excuse it. I excuse absences rarely; and job interviews don't get an excuse (although they are good news!). Your sixth unexcused absence may trigger a significant penalty to your final course grade. At my option, I may drop you from the course or give you an F upon a seventh unexcused absence. I don't penalize being tardy, but late arrivals can disrupt the class, so please try to arrive on time. I have a small "perfect attendance" prize if you attend every class session.

I will circulate a sign-in sheet during each class session. It is your responsibility to sign the sheet before I leave the room that day. **IF YOU COME TO CLASS BUT FAIL TO SIGN IN, IT WILL COUNT AS AN ABSENCE.** Make sure to sign in!

Reflection Papers. Write two papers reflecting on your first-hand interactions with intellectual property. Examples of possible topics:

- If you have tried to protect IP (copyright, trademark, patent) by making a government filing, reflect on the process.
- Reflect on a time when you signed an agreement about IP (for example, an NDA or a license to publish your work).
- If you've signed a non-compete agreement, reflect on that experience.
- If you've ever bought a counterfeit good, how did that happen and what should the law do about it?
- We encounter IP issues on an hour-by-hour basis. Have you ever downloaded music without a license? Written fan fiction? Borrowed a friend's software or video game disk so you could copy it to your hard drive? Rented a video or did pay-per-view and invited all of your friends to watch? Shared Netflix passwords? Parodied a brand or a celebrity? Discuss how the legal mechanisms worked, or didn't, in your particular situation to accomplish the goals of IP.
- You have bought many items protected by IP: books, movies, music, branded goods, patented items. Discuss a time when the IP protection interfered with your enjoyment of the item you purchased. For example, maybe you wanted to move your iTunes downloads to a new device; or you bought a device (say, a laser printer) where only the manufacturer offered replacement or complementary parts. What happened and how did it affect your views as a consumer?

This list isn't exhaustive. Feel free to develop your own topics, as long as they involve your first-hand dealings with intellectual property. **PLEASE**, whatever your topic, don't disclose any clear violations of the law or violate any confidentiality restrictions in your papers.

Each reflection paper should be around 500 words. I will grade each reflection paper on a 0-3 point scale. Most papers will get a 2 (roughly, "met expectations"). Occasionally I will award 3s for papers that exceed my expectations and 1s for papers that didn't meet my expectations because I feel (in my sole and arbitrary judgment) that the paper was rotely or perfunctorily executed. 0s are for process violations like missed deadlines. My apologies that I can't review preliminary paper drafts.

You must submit at least one reflection paper no later than February 25, 10 am. The second reflection paper is due no later than April 22, 10 am.

Upload your reflection papers to Camino. I prefer PDF submissions. Make sure you put your name on your paper.

Each reflection paper is worth 10% of the final numerical score. If you miss a reflection paper's deadline for any reason, that paper will automatically get zero points. It can be hard to find grading time in my schedule, so my apologies if it takes me a while to return your graded paper.

Final Exam. The final exam will constitute 80% of the final numerical score. The final exam will be a take-home exam, probably consisting of 1-2 essay questions with a maximum word count for each. I expect you will be able to checkout and return your exam electronically through Examsoft. The earliest checkout time will be April 28 at 10:00 am and the latest check-in time will be May 14 at noon (all Pacific time). The Examsoft timestamps are irrefutable evidence of the final exam checkout and check-in times. Make sure you get confirmation that your answer successfully uploaded to Examsoft.

You will have 73 hours to complete the final exam, starting from the time you download it. Although you will have over 3 days to write your answer, the final exam will not be materially different than I would assign as an in-class exam. It's up to you to decide how much time to spend on the final exam, but I expect most work done after the sixth or seventh hour of work will not materially improve the final exam grade (or may start reducing it).

Important note: I do not accept late exams. **You will fail the course if your final exam is not returned on time—even if you are late by only 1 minute.** NO EXCUSES. In particular, you will fail the course if, at the deadline as you are just uploading your masterfully written answer, your computer spontaneously shuts down, your neighbors are watching porn videos on your shared Internet connection, or you experience any other technological snafu that may seem unexpected but is actually Murphy's Law in action. As a result, only the most courageous or foolish students will actually wait to upload their final exam close to the deadline. Please don't learn the hard way how seriously I take deadlines.

I strongly encourage you to review my past exams to understand my exam style. You can find past exams and sample answers at my personal website (note the law may have changed in the interim). If you are new to the Santa Clara Law community, PLEASE contact me to arrange a sample test that ensures you understand my expectations.

5. RECORDINGS. I hope to record all course sessions (except guest lectures) and make the audio recordings available via iTunesU (which is available to the public). If you have any concerns about being recorded, please let me know ASAP.

6. OFFICE HOURS. I am regularly in my office between 9 and 6 M-F. Drop by at your convenience, or email me a few times that would be convenient for you and we'll schedule an appointment.

7. CONTACT.

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Email: egoldman@gmail.com [I auto-forward emails sent to my egoldman@scu.edu address, which sometimes introduces a delay, so my Gmail account is always the fastest way to reach me]

When emailing me, please reference “IP” in the subject line to avoid unintentional deletion as spam and confusion with my other course.

If you want to see some of the IP issues I’m tracking, consider reading my blogs

[<http://blog.ericgoldman.org> or <http://blogs.forbes.com/ericgoldman>] or following me at Twitter <https://twitter.com/ericgoldman>. More course-related materials, including an electronic copy of this syllabus, are available at my personal website, <http://www.ericgoldman.org/ip.html>.