



Copyright Seminar (Law 539, Section 002)

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Marquette University Law School

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1. PREREQUISITES. The Intellectual Property Law course is a prerequisite unless I waive it for you. If we have not already spoken, please contact me at once if you want to take this course but have not taken that class. You may not take this course if you have already taken a copyright law course.

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, this course is an advanced legal writing course, so you will write 3 papers that should be primed for publication. Specifically, my paramount objective is to work with you to prepare a paper you can submit to a writing competition.

3. INFORMATION SHEET/CERTIFICATIONS. No later than January 13, 2004, email me your resume and your answers to the following questions:

- What other IP courses have you taken previously?
- What type of job are you seeking after graduation?
- 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 one of those for a paper in this course?

Your email must also certify the following statements:

- I will submit my short paper to periodicals for publication prior to the end of finals.
- I will submit my long paper to (at least) one writing competition, even if that means I make the submission after the course is over.
- I will make a presentation about my paper to my peers, and I understand that the presentation will be open to the public.
- I will prepare for and pay attention to my peers' presentations as if it was a presentation by the person I most respect.
- I will provide fair and constructive comments to my peers' papers.

If you do not enthusiastically make these certifications, please contact me at once to determine if this course is right for you. I may drop you from the course if you do not send me the information sheet, resume and certifications on time.

4. **SESSIONS.** We meet from 3:20 to 5 every Tuesday afternoon between January 13 and April 20, excluding March 9 (Spring Break). In addition, there will be two guest lectures on March 24 and April 21 that you are required to attend.

5. **TEXT.** A required course packet is available at PrintWorld. In addition, you need a copy of the [Copyright Act](#) (the supplement from your IP class can serve that purpose). I also recommend (not mandatory) Eugene Volokh's *Academic Legal Writing* (ISBN 1-58778-477-7), which is a great guide for the paper-writing process.

6. **GRADING.** There are 4 components of your final grade:

a. **Attendance/Participation.** 25% 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 bona fide health issues, family emergencies or opportunity to learn more about copyright law.

For participation, I will subjectively evaluate your (a) positive contributions to class dialogues (in class and on TWEN) and (b) comments to your peers about their papers. Note that constructive contributions to discussions about your peers' presentations, or in comments to your peers' papers, will be very highly weighted. Similarly, disrespect or inattention during a peer's presentation, failure to comment on a peer's paper, or non-constructive comments to your peers about their presentations or their papers, will be costly to your participation grade.

b. **Case Summary.** You must write a case summary on a recently decided IP case in accordance with the specifications in Exhibit A. The summary is worth 5% of your final grade. I will grade your final case summary on a P/F basis. You will get a P if you are on-time and on-topic.

Your summary will be published on the Marquette website and will be considered for publication in the State Bar's IP Section's newsletter and potentially elsewhere. Thus, your final summary submission should be publication-ready.

To pick a case to summarize, visit the TWEN forum. There, you will find some proposed cases to summarize. However, you are not limited to that list, and you are welcome to select some recent case (very late 2003 or later) you'd like to summarize. You can claim a case by posting your claim under the discussion topic. However, only one person can summarize a particular case, and cases are claimed on a first-come, first-served basis. Also, I can veto any case so long as I do so reasonably promptly. You are not required to summarize only copyright cases, although I would prefer that you do so.

c. **Short Paper.** You must write a short descriptive paper on a copyright law topic. This paper is worth 20% of your final grade. A substantial part of your grade is based on how well your article addresses your target audience's needs.

To write this paper, you need to make two threshold choices:

- the periodicals you are targeting for publication. This choice will determine the audience you are targeting and what types of informational needs they have. I can reject targeted periodicals in my sole discretion.
- the type of paper you want to write (case note with practice suggestions; descriptive article with practice tips; editorial, book review, etc.). This choice may be partially constrained by the periodical you are targeting (and, therefore, the types of articles they run). This selection will also influence how long this paper must be; many periodicals like articles to be 600-1,000 words; others target 2,500 words.

When this article is completed, I expect you to circulate it to your target publications for potential publication. I will give you extra points (not to exceed the maximum points available for the short paper) if, prior to May 7, 2004, you provide me with documentation that your article has been accepted for publication in one of your target periodicals.

d. **Long Paper and Presentation.** The centerpiece of this course is a long paper combined with a presentation about it. The paper should be written for submission to a writing competition. Collectively, the long paper and the presentation are worth 50% of your final grade.

Your first step is to select your targeted writing competition. I will grade you using the judging standards of that writing competition, and the competition will dictate the required length of your paper. To help you find writing competitions, review the book *How to Pay for Your Law Degree*. I have put a copy on reserve in the library. You may want to identify several target competitions, but you need to select a primary one for grading purposes. I can veto any targeted competition in my sole discretion, and in any case, the Wisconsin State Bar IP Section's writing competition is not a suitable target (I expect you to apply for that one no matter what).

When you've selected your target competition, you next need to choose a topic. Topic selection is crucial, as it will likely affect your chances of winning the competition. Note that, to the extent the writing competition considers topic originality as part of their judging criteria (explicitly or implicitly), I will grade you on that as well. In these cases, an uninspired topic may limit the grade you can receive, no matter how hard you work or how well you write it. In all cases, you need to be more ambitious than a case note. I will consider recycled papers you've written elsewhere in law school on an individually negotiated basis.

In addition to the paper, you must make a brief (~15 minute) presentation of your work, with another 15 minutes or so reserved for class comments and discussion. You must upload a draft of your paper to the TWEN discussion forum at least 7 days prior to your presentation so that your peers may review the paper in advance of the presentation. Obviously, the more polished your paper, the more helpful your peers' feedback will be, but I don't expect that your paper will be complete by the time of your presentation. I will be sending out emails to the IP Law Society and others inviting them to attend the presentations, so you may have an audience beyond just the course participants.

No later than 7 days following a peer's presentation, you are required to deliver written constructive feedback on that person's paper/presentation. If you email the feedback, please cc me and include in the subject line "Copyright Course: Comments to [peer's name] paper." If you mark up the paper, please make a copy of your mark-up and put it in my in-box. Delivering thoughtful and productive comments to your peer's work is an essential part of this course, and late or discourteous comments on your peers' work will be heavily penalized.

e. Drafts. At your initiative, I will look at and comment on rough drafts prior to the final submission. I encourage you to submit those drafts with enough time for me to review and provide comments that you can incorporate into the paper. If at any time you're struggling, come talk to me.

f. Paper Submissions. Submit all papers through the TWEN tab entitled "Assignment Drop Box."

g. Deadlines. I have zero tolerance for missed deadlines. All deadlines are absolute: no grace period, no negotiations, no excuses (except those authorized by the appropriate dean pursuant to school regulations). Failure to abide by deadlines will dramatically affect your grade (usually, it means you get a zero on that grading portion).

7. TWEN. YOU MUST REGISTER FOR THE COURSE'S TWEN SITE NO LATER THAN JANUARY 16, 2004 OR I MAY DROP YOU FROM THE COURSE. I send important course-related emails to the TWEN email list, so please use an address you check regularly.

8. SCHEDULE/DEADLINES [SUBJECT TO CHANGE]

Date	Class Topic	Reading/Deadlines
Jan. 13	Introduction; copyright law recap	Copyright Law Basics handout (p. 1) DEADLINE: Turn in information sheet/certification/resume prior to class
Jan. 16	N/A	DEADLINE: Register for TWEN
Jan. 20	Copyright policy justifications	Eldred v. Ashcroft (p. 3) Feist Pubs. v. Rural Telephone Service (p. 64) DEADLINE: Notify me of your targeted periodical for your short paper; notify me of your targeted writing competition
Jan. 27	Advanced idea/expression dichotomy and standards for infringement	Lotus Development v. Borland Int'l (p. 77) Castle Rock Entertainment v. Carol Publishing Group (p. 93) Satava v. Lowry (p. 100) Ets-Hokin v. Skyy Spirits (p. 107)

		Positive Black Talk v. Cash Money Records and accompanying AP story (p. 109) DEADLINE: Select topic for short paper
Feb. 3	Advanced fair use	Castle Rock Entertainment v. Carol Publishing Group (p. 115) Sega v. Accolade (p. 123) DEADLINE: Select topic for your long paper; notify me of your preferences for your presentation date
Feb. 10	Copyright practice issues [registrations, notices, term, diligencing ownership, freelancers] <i>Guest speaker:</i> Michael Parks, The Tribune Company	Copyright Office Circular #1 (p. 139) New York Times v. Tasini (p. 151) DEADLINE: Last date for student consensus on students' choice lecture
Feb. 17	Protecting factual databases	American Dental Association v. Delta Dental Plans Association (p. 172) CDN v. Kapes (p. 177) Assessment Technologies v. WIREdata (p. 183) DEADLINE: Case summary due prior to class
Feb. 24	Anti-circumvention	37 CFR Part 201 (p. 196) Lexmark v. Static Control Components (p. 207) Chamberlain Group v. Skylink Technologies (p. 255) US v. Elcom (p. 265)
Mar. 2	Music piracy	Reading TBD
Mar. 16	Students' choice (see below)	Reading TBD
Mar. 23	Presentations 1, 2, 3	Student papers for these presentations
Mar. 24	Presentation by Bobbi Kwall of DePaul University College of Law [attendance at this event is required just like any other class session. Please advise ASAP if you cannot make it]	Reading TBD
Mar. 30	Presentations 4, 5, 6	Student papers for these presentations
Apr. 6	Presentations 7, 8, 9	Student papers for these presentations DEADLINE: Final draft of short paper due prior to class
Apr. 13	Presentations 10, 11, 12	Student papers for these presentations

Apr. 20	Presentations 13, 14, 15	Student papers for these presentations
Apr. 21, 4:30 pm	Nies Lecture by Graeme Dinwoodie of Chicago-Kent College of Law [attendance at this event is required just like any other class session. Please advise ASAP if you cannot make it]	Reading TBD
Apr. 30	N/A	DEADLINE: Final draft of long paper due 4 pm
May 7	N/A	DEADLINE: Last date to submit evidence of short paper being accepted for publication

You and your peers can select the “students’ choice” topic. I will prepare a presentation based on the topic you select. You should collaborate with your peers in the TWEN discussion forum to determine the consensus topic. If no consensus is reached by February 10, 2004 (preferably earlier!), then I will pick the topic myself.

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://eric_goldman.tripod.com.

Appendix A
Case Summary Specifications

1. GENERAL. Your case summary should be approximately 500 words (no more than 800 words). Your file should be Microsoft Word for Windows, 12 point Times New Roman font.

2. SUMMARY STRUCTURE.

a. Title. The title should contain the case name (in bold), the court, the exact decision date, and the words “Summary by [your name].”

Example

Ticketmaster Corp. v. Tickets.com, Inc.

U.S. District Court for the Central District of California, Mar. 7, 2003

Summary by Jeremiah Beitzel

b. Contents. All summaries should include:

- Statement of the court’s holding
- Short statement of any facts necessary to appreciate the holding (e.g. background facts, procedural facts, and legally significant facts)
- Statement of what the lower court held (if applicable)
- Statement of the logic underlying the court’s holding (with respect to the issue of interest)
- Statement of which party the court ruling favored (with respect to the issue of interest)

If the case has multiple issues, you are free to focus on only one. In any case, please focus on the new law created (or the rule of law applied) rather than any lower court’s logic. Please avoid editorial comments about the court’s decision. Where possible, describe the parties using terms such as “plaintiff,” “defendant,” “patentee” and “licensee” instead of “Ticketmaster” or “Smith.”

The first sentence should be a one-sentence abstract of the most prominent issue in your case, such as you would put in your outline.

Example

“Copyright law only protects a combination of unprotectable elements when the selection and arrangement of a sufficient number of elements creates an original work of authorship.”

The last paragraph should be a statement of which party prevailed.

Example

As a result of the merger and scenes a faire doctrines, the court of appeals affirmed the district court’s decision granting summary judgment in favor of the defendant.

3. SUBMISSION.

When you submit your case summary to TWEN, also email it to Paul Krause at paul.krause@marquette.edu. In the email text, include your name, email address and the case citation properly bluebooked. The email should have a subject line “[Case name] [Your last name].” Please name the file “[Case name] [Your last name].”