

## **Copyright, Trademark, and Related Rights**

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### **Coverage and Approach**

This course provides a detailed survey of the law of copyright, trademark and related rights (right of publicity, idea submission, cybersquatting, trade secrets) in the digital age. We will delve into the statutes, the policy reasons for these laws, what is and what is not protected, the rights of the intellectual property owner, the rights of third parties seeking to use copyright-protected works and trademarks under fair use, and how these rights are being impacted by digital media. This course does not cover patent law.

### **Course Materials: Textbook (two volumes)**

Lemley, Menell & Merges, *Intellectual Property in the New Technological Age, Volumes I & II*, 2017 ed. Volume I, Chapter 1 (assigned reading for Aug. 24 class) is available for free online at <http://bit.ly/2fWfwys>. Volume II is at the USC bookstore. Volumes I & II are available on Amazon at a reasonable price. I will provide links to supplemental materials as necessary.

### **Course Materials: Statutes**

Except as otherwise indicated in the syllabus below, all U.S. federal statutory provisions can be found online at the Cornell Legal Information Institute (<https://www.law.cornell.edu/uscode/text>), except for the Lanham Act, which can be found at BitLaw (<http://www.bitlaw.com/source/15usc/>). If you prefer a hard copy of the statutes, the same material is available in hard copy in Boyle & Jenkins, *Intellectual Property: Selected Statutes & Treaties* (2014), available online for free or for a reasonable price on Amazon.

### **Slides and Other Materials; Announcements**

Any slides used in class will be posted to Blackboard either before or shortly after the slides are discussed in class. From time to time, other supplemental materials will be distributed electronically through Blackboard or by email. I will also use Blackboard to make announcements or communicate other information.

### **Reading Assignments; Class Discussion**

This course involves a significant amount of reading and students are expected to complete the reading assignments before class. At the end of each week, I will email or post an announcement indicating the cases I expect to cover in the next week. Any assigned case should be understood to include the accompanying statutory provisions. Unless otherwise indicated in the syllabus, all assigned cases can be found in the Lemley, Menell & Merges textbook and all statutory provisions can be found in the Cornell Legal Information Institute website, bitlaw.com website or the Boyle & Jenkins statutory supplement book.

### **Schedule; Make-Up Sessions**

When the law school is in session, our class meets each Tuesday and Thursday, 9:00-10:45 a.m., in Room 3. If class is cancelled, I will provide a make-up session at a date and time TBA.

**Office Hours**

I'm happy to meet with you to discuss any questions or comments relating to the course. Office hours are on Thursday, 11 a.m. to 1:30 p.m. Location TBA. My email is [seager@usc.edu](mailto:seager@usc.edu) and my cell is (310) 890-8991.

**Recording Policy**

This class is not being recorded by the law school. Students are not permitted to record class sessions independently. If you know you will miss class, please let me know in advance to make arrangements.

**Internet/Email/Smartphone Policy**

Students are requested to limit their use of the internet for class purposes only. Students are kindly requested to turn off smartphones and refrain from emailing, texting, tweeting, transmitting messages, playing electronic games, or Snapchatting using any medium now existing or that may exist in the future.

**Grade; Participation**

Your course grade will be based on one open-book, in-class exam for which students may use laptop computers with SofTest. Participation is encouraged and the course grade will be adjusted upward to reflect exceptional in-class participation.

**Changes to Syllabus**

Depending on our pace, the syllabus may be revised from time to time. In the event of any changes, a revised final syllabus will be distributed at the end of the semester.

**Exam**

The exam will cover all assigned readings, all distributed materials, and any other matters discussed in class. The exam will be "open book" and may consist of a combination of short answer questions and multiple-choice questions. We will have one or two practice exams sometime during the middle of the course. Copies of exams from a similar course, Intellectual Property by Prof. J. Barnett, can be obtained through the law school web site. (Ignore the long essay portion of the past exams.)

**Review Session**

Our last class session will be devoted to exam preparation.

## **Part I – Introduction**

### **Class #1, Aug. 22 – Basic US Law and IP Overview**

US Legal System <https://usa.usembassy.de/etexts/gov/outlinelegalsystem.pdf>

First Amendment <https://usat.ly/2uLQVTU>

Textbook, Vol. I, Ch. I, Sect. B, pp. 31-39 <http://bit.ly/2fWfwys>

Boyle & Jenkins, Intellectual Prop. (3d ed. 2016), p. x

<https://law.duke.edu/cspd/pdf/IPCasebook2016.pdf>

### **Class #2, Aug. 24 – Philosophy and Problems of IP**

Textbook, Vol. I, Ch. I, Sect. A, pp. 1-30 <http://bit.ly/2fWfwys>

Boyle, Public Domain, pp 1-30 <http://thepublicdomain.org/thepublicdomain1.pdf>

## **Part II Copyright – Creative Works**

### **Class #3, Aug. 29 – Introduction and Requirements**

Textbook, Vol. II, Ch. IV, Sect. A-B

### **Class #4, Aug. 31 - Copyrightable Subject Matter**

Textbook, Vol. II, Ch. IV, Sect. C

### **Class #5, Sept. 5 - Ownership and Duration**

Textbook, Vol. II, Ch. IV, Sect. D

### **Class #6, Sept. 7 - Rights and Infringement**

Textbook, Vol. II, Ch. IV, Sect. E.

### **Class #7, Sept. 12 - Defenses**

Textbook, Vol. II, Ch. IV, Sect. F

### **Class #8, Sept. 14 - Remedies**

Textbook, Vol. II, Ch. IV, Sect. G.

### **Class #9, Sept. 19 – Creative Commons and Lawrence Lessig**

Boyle & Jenkins, Intellectual Prop. (3d ed. 2016), pp. 800-808

<https://law.duke.edu/cspd/pdf/IPCasebook2016.pdf>

Prof. Lessig Ted Talk

[https://www.ted.com/talks/larry\\_lessig\\_says\\_theLaw\\_is\\_strangling\\_creativity](https://www.ted.com/talks/larry_lessig_says_theLaw_is_strangling_creativity)

### **Class #10, Sept. 21 – Speaker or Screening of “Aaron: The Internet’s Own Boy”**

### **Class #11 Sept. 26 – Review, Role-Playing, Student Presentations**

### **Part III – Trademark – Brand Identities**

#### **Class #12, Sept. 28 – Introduction, What Can Be Protected**

Textbook, Vol. II, Ch. V, Sect. A-B

#### **Class #13 Oct. 3 – Establishment of Trademark Rights**

Textbook, Vol. II, Ch. V, Sect. C

#### **Class #14, Oct. 5 – Trademark Liability Analysis**

Textbook, Vol. II, Ch. V, Sect. D

#### **Class #15, Oct. 10 - Defenses**

Textbook, Vol. II, Ch. V, Sect. E

#### **Class #16, Oct. 12. – Remedies**

Textbook, Vol. II, Ch. V, Sect. F

#### **Class #17 Oct. 17 – Review, Role-Playing, Student Presentations, Guest Speaker**

### **Part IV – Right of Publicity**

#### **Class #18, Oct. 19 – Origins (Common Law and Statutes)**

Textbook, Vol. II, Textbook, Vol. II, Ch. VI, Sect. D

Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890)  
California Civil Code § 3344

#### **Class #19, Oct. 24 – Scope of Rights**

Textbook, Vol. II, Textbook, Vol. II, Ch. VI, Sect. D

*Haelen Labs. Inc. v. Topps Chewing Gum*, 202 F.2d 866 (2nd Cir. 1953)

*Midler v. Ford Motor Co.*, 849 F.2d 460 (9th Cir. 1988)

*White v. Samsung Electronics of America, Inc.*, 989 F.2d 1512 (9th Cir. 1993)

*Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977)

#### **Class #20, Oct. 26 – First Amendment v. Right of Publicity**

Textbook, Vol. II, Textbook, Vol. II, Ch. VI, Sect. D

Volokh, *The First Amendment, the right of publicity, video games and the Supreme Court*,

<http://wapo.st/2ihiMW8>

*Guglielmi v. Spelling-Goldberg Productions*, 25 Cal. 3d 860 (1979)

*Matthews v. Wozencraft*, 15 F.3d 432 (5th Cir. 1994)

#### **Class #21, Oct. 31 - Review, Role-Playing, Student Presentations, Guest Speaker**

## **Part V – Cybersquatting**

### **Class #22, Nov. 2 – Cybersquatting and Trademark**

Boyle & Jenkins, Intellectual Property, P, 3d ed. 2016, pp. 258-271:

<https://law.duke.edu/cspd/pdf/IPCasebook2016.pdf>

## **Part VI – Idea Submission**

### **Class #23, Nov. 7 – Implied Contract and Defenses**

Textbook, Vol. II, Ch. VI, Ch. C

### **Class #24, Nov. 9 - Contract Samples**

## **Part VII – Trade Secrets**

### **Class #25, Nov. 14 – Introduction, Subject Matter**

Textbook, Vol. I, Ch. II, Sect. A-B

### **Class #26, Nov. 16 – Misappropriation, Defenses, Agreements, Employees, Remedies**

Textbook, Vol. I, Ch. II, Sect. C-G

Church of Scientology

### **Class #27, Nov. 21 - Review, Role-Playing, Student Presentations**

**Thursday, November 23 – Holiday!**

### **Class #28, Nov. 28 – Review, Role-Playing, Student Presentations**

### **Class # 29, Nov. 30 - Review for Exam**