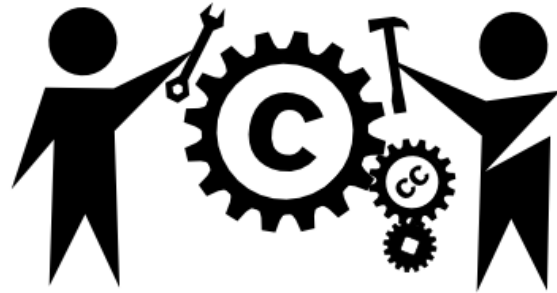


## Copyrights Syllabus

University of Idaho College of Law  
Professor Annemarie Bridy  
Spring 2014

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### Course Description

The United States Constitution confers on Congress the power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Since 1790, Congress has exercised this power to protect “original works of authorship” through the Copyright Act, a statute that has been periodically amended in response to new technological and cultural developments that have altered the way people produce, distribute, and enjoy creative and artistic works. In addition to studying the history and evolution of copyright law and policy in the United States, we will focus this semester on the central provisions of the Copyright Act of 1976 and the leading cases interpreting and applying those provisions. We will pay particular attention throughout the semester to the economic and policy challenges created in the copyright domain by digital technologies, including computers and the Internet, which have radically changed the historical relationship between producers and consumers of creative works. We will touch lightly on the increasing internationalization of copyright law and its effects on our domestic copyright regime.

### Required Reading

- COHEN, ET AL., COPYRIGHT IN A GLOBAL INFORMATION ECONOMY, 3d Ed. (Aspen 2010)
- COPYRIGHT LAWS OF THE UNITED STATES, CIRCULAR 92, UNITED STATES COPYRIGHT OFFICE (2011)<sup>1</sup>

### Class Meetings

This class meets Mondays and Wednesdays from 9:30-10:20 a.m. in Room 215. Please be timely.

The following classes are cancelled due to Professor Bridy’s academic travel requirements this semester: Monday, March 3 & Monday, March 24. Makeup classes are scheduled for Friday, March 7 & Friday, April 11 from 8:30-9:20 in Room 215. Please make a note of these changes on your calendar.

### Attendance, Preparation, and Participation

- The American Bar Association and the College of Law require regular and punctual class attendance. If your cumulative absences (for any reason) exceed three (3) classes, please see me to discuss the issue. Habitual absence from class may negatively affect your final grade and can, in extreme cases, lead to your failing the course. I will take attendance at the beginning of each class, so please be on time.

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<sup>1</sup> Available on Blackboard. Also available as a PDF download at <http://www.copyright.gov/title17/>. If you want a printed copy, you can order it at <http://bookstore.gpo.gov/products/sku/030-002-00199-3> for \$16.

- Because this is a small, discussion-oriented seminar, your careful and consistent preparation for class is vital, as is your willingness to be engaged with the material, with me, and with your fellow students. This is an exciting and dynamic area of the law, but the class won't be exciting or dynamic without your active participation. Please come to every class prepared to discuss the assigned material and to present your own informed perspective on the issues at hand. The reading averages only about 30 pages per week.

### **Grades**

Your grade in the course will be based on your performance on a final exam. We will discuss the substance and format of the final exam later in the semester. If, in my judgment, your class participation has been consistently excellent both qualitatively and quantitatively over the course of the semester, I will increase your final grade one-third of a letter grade (e.g., from B to B+). Performance in student-led discussions throughout the course of the semester (see below) will be one factor in determining who gets the “bump” for class participation.

### **Disability Accommodations**

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Students should meet with Disability Support Services (DSS) by the end of the first week of class to assess whether accommodations are warranted for courses and/or examinations. All accommodation requests are then submitted by DSS to Dean Dodge for final approval. DSS serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate requests for or to grant disability accommodations. Students may contact DSS by calling 208-885-6307 or sending an e-mail to [dss@uidaho.edu](mailto:dss@uidaho.edu). It is ultimately the student's responsibility to seek a disability accommodation, and until one is approved by DSS and Dean Dodge, no student will be entitled to receive any accommodation. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

### **Laptop & Mobile Device Policy**

Laptops are a useful academic tool, but they bring the potential for unnecessary and unproductive distractions for both their users and neighboring students. You may use your laptop in class to take notes and review your case briefs, but you may not use your laptop in class to shop, play games, tweet, do online social networking, e-mail or IM, or anything else that diverts you or your neighbors from what is happening in class. If you violate this policy, you may be banned from using a laptop in class.

You may not use a mobile device (e.g., a tablet or a smartphone) to engage in text messaging or online activities during class. If you bring a mobile phone to class, be sure the ringer is OFF, and keep it in your bag or your pocket to avoid being distracted by incoming text messages.

### **Recording Class Sessions**

Students may not electronically record classes unless they have the express consent of the instructor, except where the Dean of Students has allowed recording as a disability accommodation pursuant to a recommendation by Disability Support Services. Recording classes without the instructor's express consent violates the Honor Code. Students recording classes as a disability accommodation must follow procedures set down by DSS. Students who are unable to attend class for reasons of illness or other exigencies must receive permission from the instructor before classes are recorded on their behalf. Contact the law library for recording equipment and information on recording procedures.

## Assignments

- All readings are from the case book unless otherwise indicated. All code sections are in Circular 92. Use the Circular 92 internal table of contents to locate specific sections.
- You will be expected to cite cases and code sections in the final exam, so please take notes accordingly.
- The schedule and assignments below are subject to modification as time and other considerations require.
- *Within the assigned page ranges, read all of the notes, questions, and other material before, between, and after the cases. Read the full text of all assigned statutory provisions.*

READING SCHEDULE		
Assignment #	Material	Pages
1	<b>Chapter 1: Copyright in Context</b>	3-32
2	<b>Chapter 2: Authors, Writing, and Progress—Fixation</b> <u>Cases</u> <i>Williams Elec. v. Artic Int'l</i> <i>MAI Sys. v. Peak Computer</i> <i>Cartoon Networks v. CSC Holdings</i> <u>Code</u> 17 U.S.C. § 102(a) (covered works) 17 U.S.C. § 101 (definitions of “fixed” and “copies”) 17 U.S.C. § 117 (limitations on rights; computer programs)	45-57 & Circular 92  <a href="#">Blackboard</a>
3	<b>Chapter 2: Authors, Writing, and Progress—Originality</b> <u>Cases</u> <i>Feist Publications v. Rural Tel. Serv.</i> <i>Burrow-Giles Lithographic Co. v. Sarony</i> <i>Bleistein v. Donaldson Lithographing</i> <i>Bell v. Catalda</i> <i>Meshwerks v. Toyota Motor Sales</i>	57-76
4	<b>Chapter 2: Authors, Writing, and Progress—The Idea/Expression Dichotomy</b> <u>Cases</u> ➤ <i>Baker v. Selden</i> ➤ <i>A.A. Hoehling v. Universal City Studios</i> <u>Code</u> ➤ 17 U.S.C. § 102(b) (excluded works)	81-94 & Circular 92

READING SCHEDULE		
Assignment #	Material	Pages
5	<p><b>Chapter 2: Authors, Writing, and Progress—Derivative Works &amp; Compilations</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Batlin &amp; Son v. Snyder</i></li> <li>➤ <i>Entertainment Research v. Genesis Creative</i></li> <li>➤ <i>Feist Publications v. Rural Tel. Serv.</i></li> <li>➤ <i>Roth Greeting Cards v. United Card Co.</i></li> <li>➤ <i>Mason v. Montgomery Data</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 101 (definition of “derivative work” &amp; “compilation”)</li> <li>➤ 17 U.S.C. § 103 (scope of copyright in derivative works &amp; compilations)</li> </ul>	99-116 & Circular 92
6	<p><b>Chapter 2: Authors, Writing, and Progress—Authorship</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Lindsay v. The R.M.S. Titanic</i></li> <li>➤ <i>Erickson v. Trinity Theatre</i></li> <li>➤ <i>Aalmuhammed v. Lee</i></li> <li>➤ <i>CCNV v. Reid</i></li> <li>➤ <i>Aymes v. Bonelli</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 201 (ownership of copyrights)</li> <li>➤ 17 U.S.C. § 101 (definitions of “joint work” and “work made for hire”)</li> </ul>	116-132 & Circular 92
7	<p><b>Chapter 4: Protected Works and Boundary Problems—The Useful Article Doctrine</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Mazer v. Stein</i></li> <li>➤ <i>Kieselstein-Cord v. Accessories by Pearl</i></li> <li>➤ <i>Carol Barnhart v. Economy Cover</i></li> <li>➤ <i>Brandir Int’l v. Cascade Pacific Lumber</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. 102(a)(5) (covered works)</li> <li>➤ 17 U.S.C. § 101 (definitions of “pictorial, graphic, and sculptural works” &amp; “useful article”)</li> </ul>	191-209 & Circular 92

READING SCHEDULE		
Assignment #	Material	Pages
8	<p><b>Chapter 4: Protected Works and Boundary Problems—Computer Software</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Apple v. Franklin</i></li> <li>➤ <i>Computer Assoc. Int'l v. Altai</i></li> <li>➤ <i>Softel v. Dragon Medical</i></li> <li>➤ <i>Lotus v. Borland</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 102(b) (excluded works)</li> <li>➤ 17 U.S.C. § 101 (definitions of “literary work” and “computer program”)</li> </ul>	215-244 & Circular 92
9	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—Infringement (Reproduction &amp; Derivative Work Rights)</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Three Boys Music v. Bolton</i></li> <li>➤ <i>Selle v. Gibb</i></li> <li>➤ <i>Ty v. GMA</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 106 (exclusive rights)</li> <li>➤ 17 U.S.C. § 501 (infringement)</li> </ul>	289-302 & Circular 92
10	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—The Reproduction Right</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Nichols v. Universal Pictures</i></li> <li>➤ <i>Arnstein v. Porter</i></li> <li>➤ <i>Steinberg v. Columbia Pictures</i></li> <li>➤ <i>Boisson v. Banian</i></li> <li>➤ <i>Cavalier v. Random House</i></li> <li>➤ <i>Swirsky v. Carey</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 106(1) (right of reproduction)</li> </ul>	302-316; 324-333 & Circular 92

READING SCHEDULE		
Assignment #	Material	Pages
11	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—The Distribution Right and the First Sale Doctrine</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Capitol Records v. Thomas</i></li> <li>➤ <i>Bobbs-Merrill Co. v. Strauss</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 106(3) (right of distribution)</li> <li>➤ 17 U.S.C. § 101 (definitions of “copies” and “phonorecords”)</li> <li>➤ 17 U.S.C. § 109(a) (first sale doctrine/distribution)</li> </ul> <p><u>Additional Reading</u></p> <ul style="list-style-type: none"> <li>➤ The Digital Death of Copyright’s First Sale Doctrine</li> <li>➤ The Decline of DVD-by-Mail, or Further Thoughts on the Digital Death of Copyright’s First Sale Doctrine</li> </ul>	<p>341-354 &amp; Circular 92</p> <p><a href="#">Online</a></p> <p><a href="#">Online</a></p>
12	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—The Right to Prepare Derivative Works</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Castle Rock Publishing v. Carol Publishing (Part I)</i></li> <li>➤ <i>Warner Bros. v. RDR Books</i></li> <li>➤ <i>Mirage Editions v. Albuquerque A.R.T. Co.</i></li> <li>➤ <i>Lee v. A.R.T. Co.</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 101 (definition of “derivative work”)</li> <li>➤ 17 U.S.C. § 106(2) (right to prepare derivative works)</li> </ul>	<p>365-385 &amp; Circular 92</p>
13	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—The Public Performance Right</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Columbia Pictures v. Redd Horne</i></li> <li>➤ <i>Cartoon Networks v. CSC Holdings</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 101 (definitions of “perform” and “publicly”)</li> <li>➤ 17 U.S.C. § 106(4) (right of public performance)</li> </ul>	<p>411-421 &amp; Circular 92</p>
14	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—The Public Display Right and Limits on Public Performance &amp; Display Rights</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Perfect 10 v. Amazon.com (Part I)</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 101 (definitions of “display” and “publicly”)</li> <li>➤ 17 U.S.C. § 106(5) (right of public display)</li> <li>➤ 17 U.S.C. § 109(c) (first sale doctrine/public display)</li> <li>➤ 17 U.S.C. § 110 (limits on public performance &amp; display rights)</li> </ul>	<p>421-430 &amp; Circular 92</p>

READING SCHEDULE		
Assignment #	Material	Pages
15	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—Copyright and the Music Industry</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Newton v. Diamond</i></li> <li>➤ <i>Bridgeport Music v. Dimension Films</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 114 (scope of exclusive rights in sound recordings)</li> <li>➤ 17 U.S.C. § 115 (compulsory mechanical license for musical works)</li> </ul> <p><u>Additional Reading</u></p> <ul style="list-style-type: none"> <li>➤ Christopher J. Cabott, <i>Understanding the Music Industry's Changing Economy and Wall Street's Interest in Song Catalogs</i> (2009)</li> </ul>	<p>436-451 &amp; Circular 92</p> <p>Blackboard</p>
16	<p><b>Chapter 5: The Statutory Rights of Copyright Owners—Copyright and the Music Industry</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Arista Records v. Launch Media</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 106(4) (right of public performance—non-dramatic musical works)</li> <li>➤ 17 U.S.C. § 106(6) (right of public performance for digital audio transmissions of sound recordings)</li> <li>➤ 17 U.S.C. § 116 (compulsory license for jukeboxes)</li> <li>➤ 17 U.S.C. § 110(5)(A)-(B) (the “homestyle” exemption)</li> </ul>	<p>455-468 &amp; Circular 92</p>
17	<p><b>Chapter 6: The Different Faces of Infringement—Direct, Contributory, and Vicarious Infringement</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Religious Tech. Ctr. v. Netcom</i></li> <li>➤ <i>Fonovisa v. Cherry Auction</i></li> <li>➤ <i>Perfect 10 v. Amazon.com</i> (Part II)</li> <li>➤ <i>Perfect 10 v. Visa</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 501 (infringement)</li> </ul>	<p>469-489 &amp; Circular 92</p>
18	<p><b>Chapter 6: The Different Faces of Infringement—Device Manufacturers and Inducement to Infringe</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ (Summaries of <i>Sony v. Universal</i>, <i>A&amp;M Records v. Napster</i>, <i>In re Aimster</i>)</li> <li>➤ <i>MGM v. Grokster</i></li> </ul>	<p>489-502</p>

READING SCHEDULE		
Assignment #	Material	Pages
19	<p><b>Chapter 6: The Different Faces of Infringement—On-Line Service Provider Liability</b></p> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 512 (DMCA: limitations on OSP liability for user infringement)</li> </ul>	503-516 & Circular 92
20	<p><b>Chapter 7: Another Limitation on Copyright: Fair Use</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Harper &amp; Row v. Nation Enterprises</i></li> <li>➤ <i>Campbell v. Acuff-Rose Music</i></li> <li>➤ <i>Goldiblox v. Island Def Jam Music Group (Complaint &amp; Answer)</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 107 (fair use)</li> </ul>	529-552 & Circular 92  Blackboard
21	<p><b>Chapter 7: Another Limitation on Copyright: Fair Use</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Castle Rock v. Carol Publishing (Part II)</i></li> <li>➤ <i>Núñez v. Caribbean Int’l News Corp.</i></li> <li>➤ <i>Bill Graham Archives v. Dorling Kindersley</i></li> </ul>	552-565
22	<p><b>Chapter 9: Technological Protections</b></p> <p><u>Cases</u></p> <ul style="list-style-type: none"> <li>➤ <i>Universal v. Remeirdes</i></li> <li>➤ <i>Chamberlain Group v. Skylink Tech.</i></li> <li>➤ <i>Lexmark Int’l v. Static Control Components</i></li> </ul> <p><u>Code</u></p> <ul style="list-style-type: none"> <li>➤ 17 U.S.C. § 1201 (DMCA: circumvention of technological protection measures)</li> </ul>	657-676; 680-691 & Circular 92