

## COPYRIGHT LAW

*Atlanta's John Marshall Law School*

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| <b>Term:</b>                  | Summer (2.0 credit hours)<br>Course No. EE431E1<br>Room (tba)  |
| <b>Time:</b>                  | Tuesdays & Thursdays<br>May 28 – July 16, 2013<br>6:15 pm – 8:15 pm  |
| <b>Exam:</b>                  | (tba)  |
| <b>Instructor:</b>            | Jonathan D. Goins, Esq. (Adjunct Professor)  |
| <b>Contact Information:</b>   | (e) jgoinesq@gmail.com<br>(e) jgoins@johnmarshall.edu<br>(w) 404-539-9101**<br><br>**office hours by appointment   |
| <b>Alternate Contact:</b>     | Sylvia Fernandez<br><i>Senior Faculty Coordinator</i><br>(w) 404-872-3593 ext. 285<br>(e) sfernandez@johnmarshall.edu  |
| <b>Required Materials:</b>    | 1) <i>Intellectual Property in the New Technological Age</i><br>Merges et al.<br>(5th ed. 2010)<br><br>2) Lexis/Westlaw Log-In Access For Certain Cases<br><br>3) Copyright Act (available @ TwenSite) |
| <b>Recommended Materials:</b> | 1) Copyright Examples & Explanations<br>Stephen M. McJohn (4th ed. 2012)<br><br>2) <a href="http://www.copyright.gov">www.copyright.gov</a>  |

## **Copyright Law Course Overview:**

The subject of copyrights is one of the four core, traditional areas of intellectual property law (with the other three being patents, trademarks and trade secrets). Intellectual property rights are based fundamentally in federal statute, as codified in the “intellectual property clause” of Article I of the U.S. Constitution:

The Congress shall have power . . . to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

U.S. Const., Art. I, § 8. More specifically, copyright law in the U.S. is based on the Copyright Act, 17 U.S.C. § 101 *et al.* Thus, students should understand from the outset that copyright is statutory in nature. It protects generally authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- 1) reproduce the work in copies or phonorecords
- 2) prepare derivative works based upon the work
- 3) distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending
- 4) perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works
- 5) display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work
- 6) perform the work publicly by means of a digital audio transmission

There are certain exceptions or limitations to said copyright protection, including the defense(s) of fair use, First Amendment, parody, library exemption, consent/license, independent creation, inequitable conduct, and copyright misuse.

The course will cover the primary cases interpreting and expanding upon the Copyright Act and its related copyright principles, as well as industry specific aspects reshaping the traditional notions of copyright law in light of technology, the Internet and entertainment. The course will also provide real-life examples of matters involving copyright issues.

**Copyright Law Course Objectives:**

- Understand the elements and summarize in writing the statutory definition of “copyright”;
- Identify the core statutory protectable works of copyright as recognized by the Copyright Act, including providing examples of each core statutory work;
- Analyze a given fact pattern, case or problem as assigned throughout the course, including (a) recognizing whether a work is protectable or not; and (b) explaining why the work is subject to protection;
- With respect to copyright ownership involving contracting parties, recognize what constitutes a “works for hire” and differentiate between such “works for hire” as an employee or as a specially ordered/commissioned work;
- Draft a “works for hire” assignment;
- Calculate the duration of a copyrighted work;
- Identify and argue any applicable defenses (e.g., fair use) to copyright works in a given fact pattern, or problem or case assigned throughout the course;
- Interpret the key provisions of the Copyright Act;
- Research and analyze (using the I-R-A-C method) the key cases assigned in the course;
- Solve the problems cited in the *Merges* book as assigned in the course;
- Identifying and completing the compliance requirements of a “take-down” notice under the Digital Millennium Copyright Act (“DMCA”); and
- Propose available remedies to a given fact pattern involving copyright infringement.

**Grading:**

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| <b>10 pts</b> | <p><b>Class Preparation/Participation:</b></p> <p>In accordance with Section 504(g)-(h) of the John Marshall Law School’s Student Handbook, students shall be graded on classroom performance and attendance. Attendance, class preparation and participation are a critical component of completing this course. Students should read the assigned materials carefully and be prepared for detailed discussion of them. Adequate preparation requires, at a minimum, reading the assigned materials; thoroughly analyzing those materials in their own right and in light of other materials or topics previously or simultaneously assigned; and being able to engage in meaningful discussion of those materials in class. Students are expected to participate in group exercises when assigned in class and to make well-reasoned contributions to group and class discussions. Be sure to read closely and think carefully about the questions and practice problems raised in the note material and after the cases; we will often use those questions and problems as a basis for discussion in class.</p> |
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|               | A thorough understanding of the statutory provisions is critical to the practice of intellectual property law. Be sure to read carefully the text of the relevant statutes as they arise in the assignments. You should bring the assigned course book, your copy of the statutory provisions (handed out on the first day of class) and any assigned case(s) (as cited in the syllabus for the particular day) with you to each class. If you do not have the relevant statutes in class and/or have not adequately reviewed them prior to class, you will be considered unprepared. Up to 10 points shall and can be deducted for lack of attendance or class performance and preparation. |
| <b>10 pts</b> | <b>Project Assignment:</b><br><br>Students will be given a project assignment throughout the course, which involves drafting a “works for hire” assignment. Up to 10 points will be given based upon your written submission of the foregoing. Assignment will be due June 13.   |
| <b>80 pts</b> | <b>Exam:</b><br><br>Students will be given an examination involving multiple choice and essays. Only a clean copy of the Copyright Act will be permitted.  |

**Class Assignments:**

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| 5/28 | Introduction of IP, Basic Principles                             | <i>Merges</i> book: pp. 1-31, 411-420   |
| 5/30 | Copyright Requirements<br>(Originality + Fixation + Publication) | <i>Merges</i> pp. 420-440<br>(including problems 4-1, 4-2 and 4-3)<br><i>MLK v. CBS</i> (pull case: 194 F.3d 1211)  |
| 6/4  | Statutory Types/Subject Matter of<br>Copyright Works             | <i>Merges</i> pp. 478-87<br>(including problems 4-12, 4-13, 4-16)   |
| 6/6  | Idea-Expression Dichotomy;<br>Useful Article Doctrine            | <i>Merges</i> pp. 441-448, 460-473 (including<br>problems 4-4, 4-5, 4-8)  |
| 6/11 | Ownership & Transfer of Copyrights,<br>Works Made For Hire       | <i>Merges</i> pp. 488-508, 513-515<br>(including problem 4-17, 4-18)<br><i>Mattel v MGA</i><br>(pull case: 782 F Supp 2d 911)<br><i>Stanford v Roche</i><br>(pull case: 583 F.3d 832) |

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| 6/13 | Termination of Transfer of Copyrights<br><br>Duration  | <i>Merges</i> pp. 515-518<br><i>Scorpio Music v Willis</i><br>(pull case: 2012 WL 1598043)<br><i>Merges</i> pp. 508-513<br>(including problems 4-22, 4-23) |
| 6/18 | Traditional Rights of Copyright Owners<br>(Right to Make Copies)   | <i>Merges</i> pp. 518-35<br>(including problem 4-24, 4-26)   |
| 6/20 | Traditional Rights of Copyright Owners<br>(Derivative Works, Distribution Rights,<br>Moral Rights);      | <i>Merges</i> pp. 556-571, 577-581<br>(including problems 4-32, 4-33)  |
| 6/25 | Traditional Rights of Copyright Owners<br>(Public Performance/Display Rights)<br><br>*The Music Industry | <i>Merges</i> pp. 571-577<br><br>* <i>Cohen</i> Handout (pp. 436-451, 455-457)   |
| 6/27 | The Fair Use Defense   | <i>Merges</i> pp. 592-651<br>(including problems 4-43, 4-47)   |
| 7/2  | Other Defenses;<br>First-Sale Doctrine;<br>Indirect Liability  | <i>Merges</i> pp. 664-666<br><i>Kirtsaeng v. John Wiley &amp; Sons</i><br>(pull case: 133 S.Ct. 1351)<br><i>Merges</i> pp. 581-592                         |
| 7/4  | NO CLASS   |  |
| 7/9  | DMCA Safe Harbor Provision   | <i>Merges</i> pp. 676-699<br><i>Viacom v YouTube</i><br>(pull case: 676 F.3d 19)   |
| 7/11 | Enforcement & Remedies   | <i>Merges</i> pp. 722-32   |
| 7/16 | Copyright 101 Retake   |  |