

PIERCE LAW-TSINGHUA CHINA INTELLECTUAL PROPERTY SUMMER INSTITUTE (CHIPSI) 2008

CONTEMPORARY ISSUES IN COPYRIGHT LAW

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COURSE SYLLABUS

I. Introduction

The early 18th century saw the development of laws that conferred some form of rights over an author's creation, spurred largely by the invention of the printing press and the emergence of the printing industry. The first modern copyright statute is generally thought to be the Statute of Anne, passed in England in 1710. The idea that legal rights should be given over copyrightable works continued to take hold, finding its basis in theories ranging from natural rights to economic incentive theory. In the 20th century, new technological advances that greatly enhanced copying, distribution and performance – from the earlier gramophone to the later video recorder – challenged the adaptability of copyright law, which responded by (among other things) creating new categories of copyrightable works and changing the duration of copyright protection.

The most recent challenge faced by modern copyright law has been posed by the Internet and digital technology. These new forms of communication and creation have made the copying and dissemination of material faster, better and easier than ever before. They have also allowed such material (and copies thereof) to be sent globally, and facilitated user creativity to an extent hitherto unimagined. These developments have led to policy battles and litigation between copyright owners and users in a number of creative fields, from music to art, and have also raised questions of intermediary liability on the part of Internet service and other technology providers.

This course is intended to provide students with an overview of some of the legal and policy issues generated by the rise of the Internet and digital technology. Although much of the course material is taken from United States (US) case law and sources, the digital copyright challenge is global. As such, international copyright treaties and selected case law from non-US jurisdictions will be referred to during the course. In addition, students should know that the study of modern copyright law cannot be separated from its context, particularly given the realities of globalized trade, and the link between the rationales for copyright protection and the need for economic, cultural and social development.

The classes have been designed to introduce students to some of the legal solutions that have been adopted (legislatively and judicially); however, the course materials are intended to provide only a starting point for thinking about the issues raised by each topic. Students will be expected to engage one another in active class discussions. Ultimately, the theme that underlies this class is the fundamental question that is, and has always been, at the heart of copyright law: ***what is the appropriate policy balance to be struck as between the public interest in protecting and incentivizing creators, and the competing public interest in facilitating access to knowledge and development?***

II. Course Administration

All the course materials (i.e. readings and class assignments) will be available only in electronic form and accessible online through the West Education Network (TWEN), from Westlaw (<http://lawschool.westlaw.com>.) Remember that the course title is “Contemporary Issues in Copyright Law.” US students whose schools subscribe to Westlaw should be able to access the TWEN site for the course using their school-assigned email IDs; Chinese students (and those otherwise without Westlaw access) will be provided with guest access. Please inform me by the first day of class if you have any difficulty accessing the site, or require guest access.

Most classes will also have slide handouts, in the form of Microsoft Powerpoint slides. These slides will be posted on TWEN either before, or shortly after, each class.

The TWEN site will also include web links and other useful resources, e.g. copies of the US Copyright Act and the relevant international copyright treaties (i.e. the Berne Convention and the Agreement on Trade Related Intellectual Property Rights (TRIPS).)

The course examination will consist of two (2) short essay questions. It will be a one (1) hour, open book examination. More detailed instructions will be provided in class.

III. Lesson Plan

TUESDAY JULY 8 (CLASS ONE)

- Fundamental Copyright Principles (1): Copyrightable Subject Matter in the Digital Age

WEDNESDAY JULY 9 (CLASS TWO)

- Fundamental Copyright Principles (2): Infringement, Fair Use and Other Exceptions

TUESDAY JULY 15 (CLASS THREE)

- Copyright Infringement and Internet Search Engines
 - The US cases of *Kelly v ArribaSoft* (2003) and *Perfect 10 v Amazon & Google* (2007)

WEDNESDAY JULY 16 (CLASS FOUR)

- Copyright Infringement and “Distribution” via the Internet
 - US case law from *Napster* (2001) to *Elektra v Howell* (2008)

THURSDAY JULY 17 (CLASS FIVE)

- TAKING STOCK: What should copyright law do about infringement and fair use in the digital age?

- The Google Book Search Project: a Case Study

FRIDAY JULY 18 (CLASS SIX)

- “Secondary Copyright Liability” US-style
 - *Sony v Universal City Studios* (1984), *MGM v Grokster* (2005), and the Concepts of Contributory & Vicarious Infringement

MONDAY JULY 21 (CLASSES SEVEN & EIGHT)

- Filesharing & Copyright Infringement as Global Issues
 - from the Federal Court of Australia in *Universal Music v Sharman License Holdings (Kazaa)* (2005) and the Canadian Federal Court of Appeal in *BMG Canada v John Doe* (2005) to the Hong Kong Court of Final Appeal in *Chan Nai Ming v HK SAR* (2007)
- TAKING STOCK: What should copyright law do about new technology?
 - User-Generated Content: from Sampling and Remixing to Virtual Worlds

WEDNESDAY JULY 23 (CLASSES NINE & TEN)

- Criminal Liability for Copyright Infringement: Recent Legislative Trends
- TAKING STOCK: What should copyright law do about global copyright piracy?
- Course Wrap-Up
