Law of Computer Technology

(17-562, 17-662, 17-762)

FALL 2021

OFFICIAL COURSE WEB PAGE

Tuesdays and Thursdays 8:35 - 9:55 a.m. Baker Hall A51, possibly occasionally remote

Course Overview

This course is both a survey of computer law and an examination of how courts and administrative agencies make decisions on issues involving computer technology. It is a survey of the most important and controversial issues in technology law today. The material is divided into six primary subjects: **1. Legal process:** how courts operate, differences between civil and criminal law, who has to obey the determination of a court, over whom can a court exercise power, and regulatory law. **2. Evidence:** what has to be proven to a court and how it is done, rules of evidence, burdens of proof, expert testimony. **3. eBusiness Law:** software licenses, clickwrap contracts, electronic transactions. **4. Personal Intrusions:** social media, libel and defamation, data privacy, position monitoring, AI, robotics and drone law**. . 5. Intellectual Property:** Trade secrets and confidentiality agreements. Copyright: fair use, software copyrights. Patents: what is patentable, how patents are obtained, software patents, Internet patents. **6. Government Regulation:** taxing the Internet, antitrust law, Net neutrality, statups and venture caplital, computer crime.

No legal background is required or assumed. This is not a law school course.

Great effort is expended to keep the syllabus current based on breaking legal events. Therefore, the content and ordering of lectures may vary somewhat as the course progresses.

NOTE: It is possible that the instructor may be obliged to testify at one or more trials during the semester. Any missed lectures will be rescheduled or held re,otely via Zoom.

Which Course Should I Take?

All three courses meet in the same place at the same time. They differ only in course length, number of homework assignments and number of credits awarded.

17-762 is a 12-unit, full-semester course intended for graduate students, particularly those in the MS in Artificial Intelligence and Innovation program and Societal Computing Ph.D. students.

17-562 is a 9-unit, full-semester course intended for undergraduates and graduate students outside of ISR.

17-662 is a 6-unit minicourse offered in Fall Mini 1, consisting of the first 13 lectures. It is required for students in the Privacy Engineering program. The requirement can also be satisfied with 17-562 or

17-762. Almost all students who register for 17-662 eventually switch into 17-562 or 17-762. However, except for MS in Artificial Intelligence and Innovation students, who must take 17-762, any student may register for any version of the course.

Everyone in all three courses will take a take-home final examination. The final exam counts for 30% of the grade. There are no midterm exams. Class participation counts for 10%. Homework counts for 60%. There is one mini-homework for everyone, then 4 more homeworks in 17-762, 3 in 17-562 and 2 in 17-662.

Instructor

Michael I. Shamos, Ph.D., J.D,, is Distinguished Career Professor in the School of Computer Science. Dr. Shamos is an intellectual property attorney admitted to the Pennsylvania Bar and the Bar of the United States Patent and Trademark Office. He has previously taught courses in Intellectual Capital, eCommerce Legal Environment and Internet Law and Regulation for the Tepper School of Business, as well as courses in the Computer Science, Mathematics and Statistics Departments. He was Director of the MSIT in eBusiness Technology in the Institute for Software Research at Carnegie Mellon from 2004-2008. He is now Director of the M.S. in Artificial Intelligence and Innovation. Dr. Shamos is a frequent expert witness in computer copyright, patent and electronic voting cases.

No textbook

There is no textbook because the materials necessary for this course are very recent and have not yet found their way into textbooks. All of the readings are available on the Internet, and will be posted approximately one month in advance. **Readings are to be done BEFORE the associated lecture.** PLEASE NOTE: readings for future lectures may change as the course progresses if warranted by significant legal decisions. So read ahead, but not too far ahead.

You may find the course glossary useful in understanding legal terminology and abbreviations.

Administrative Information

The course meets twice a week on Tuesdays and Thursday 8:35-9:55 a.m.in Baker Hall A51, occasionally via Zoom.

Students are encouraged to work together on the homework assignments. Past experience has shown that students do better when they work in teams. However, after discussing problems and solutions jointly, each student must prepare their own paper individually, without copying material from other people.

The final exam will be a take-home over a period of at least 24 hours, date to be determined. It will be open-book, open notes and open Internet. However, unlike with homework, collaboration with others is not permitted during the final exam.

Instructor Availability

To ask a question or schedule an appointment outside of class, please send email to
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Grading Policy

Written work will not be re-graded except for manifest error. A "manifest error" is one that is immediately apparent from the paper itself, such as failure to grade a question or an arithmetic error in computing a score.

Course Syllabus

Topic 1 - THE LEGAL PROCESS

1. COURTS (Tuesday, August 31, 2021) – The state and federal legal systems of the United States. The appellate court hierarchy: which courts are bound by which decisions? How to read a legal opinion (a critical skill for the course).

Reading: Introduction to the Court System (Barclay, 4 pp.)

Appellate Review and *Stare Decisis* (Judge Kelsey, 6 pp.)

How to Read a Judicial Opinion: A Guide for New Law Students (Kerr, 9 pp.)

How to Read a Legal Citation, (3 pp.)

Basic Legal Citation: *Starting Points* (3 pp.)

Luis v. Zang, No. 18-3707 (6th Cir. Apr. 29, 2019) (6 pp.)

Hepp v. Facebook, 2:19-cv-04034-JMY (E.D. Pa., June 5, 2020). Complaint(15 pp.) Opinion(13 pp.)

Optional reading:

A Guide to Legal Literacy (California State Bar, 73 pp. -- contains a good glossary)

The Judicial System in North Carolina (25 pp. -- shows the structure of a state judicial system)

Teaching *Stare Decisis* Using Browsewrap Agreements (Sprague) (17 pp. -- contains material relevant to Lecture 9)

Understanding the Federal Courts (47 pp. - a deeper dive into the U.S. Federal Court system)

2. REGULATORY LAW (Thursday, Sep. 2, 2021) – Far more law is embodied in government regulations imposed by administrative agencies than appears in statutes. This is particularly true in the privacy space. When properly enacted, regulations have the same force of law as if they were enacted by a legislature, and are enforced by the agencies, which can impose fines and penalties for violations. How regulations are made, their legal effect, appeals from agency decisions, interplay between government agencies and the courts.

Reading: A Guide to the Rulemaking Process (Office of the Federal Register, 11 pp.)

[The Reg Map](#) (1 p. diagram)

[15 U.S.C. 45](#) (Powers of the Federal Trade Commission, 6 substantiave pp.)

[Mail or Telephone Order Merchandise Rule Notice of Comment Period](#) (2 pp.)>

[Final Mail or Telephone Order Merchandise Rule,](#) 16 C.F.R. 435 (5 pp.)

Optional Reading: [Code of Federal Regulations](#) (C.F.R.) [Just browse, particularly Titles 15, 16, 37 and 47.]

[A Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule](#) (11 pp.)

[Children's Online Privacy Compliance Guidelines](#) (12 pp.)

[Children's Online Privacy Protection Act](#) (COPPA) [particularly Section 6502] ([Backup copy in .pdf](#)) (10 pp.)

3. INTERPRETING STATUTES (Tuesday, Sep. 7, 2021) – Technology advances rapidly, and statutes and legal decisions can't keep up. This means that old laws are constantly being applied to situations not contemplated when the laws were originally passed. This means that a court must interpret the words of a statute in a new context, a process called statutory interpretation. This is not a haphazard process, but is guided by specific rules which, unfortunately, can produce anomalies that must be remedied later by the legislature. We will look at interpretation of non-technical statutes in light of new technology. THIS IS THE SINGLE MOST IMPORTANT LECTURE IN THE COURSE.

[Regina v. Ojibway](#) (3 pp. -- a classic of legal writing)

Optional reading: [Joffe v. Google (9th Cir. Sept. 10, 2013)](#) (35 pp.)

[Yates v. United States (Sp. Ct., Feb 25, 2015)](#) (46 pp. -- The current Supreme Court view of ejusdem generis)

[New Hampshire v. MacMillan, 152 N.H. 67 (2005)](#) (5 pp.)

[Jarecki v. Searle, 367 U.S. 301 (1961)](#) (7 pp.)

[N.Y. Times v. Tasini, 533 U.S. 483 (2001)](#) (3 p. summary)

[U.S. v. Lacy, 119 F.3d 742 (9th Cir. 1997)](#) (9 pp.)

[Microsoft v. Comm'r of Internal Revenue, 311 F.3d 1178 (9th Cir. 2002)](#) (21 pp.)

[Retail Ventures v. National Union Fire Insurance Company of Pittsburgh](#) (6th Cir. Aug. 23, 2012, 10 pp.)

[Rulings of the (VA) Tax Commissioner 03-2](#) (2003, 5 pp.)

4. JURISDICTION (Thursday, Sep. 9, 2021) – The jurisdiction question is, "when does a court have the power to hear a particular case and bind the parties by its decision"? Jurisdiction is often a key issue in determining whether a lawsuit is brought at all, and where and against whom it is brought. Computer technology, particularly networking and wireless communication, has changed the way courts think about jurisdiction, which has historically been tied to physical presence in a particular state.

Reading: International Shoe Co. v. Washington, 326 U.S. 310 (1945) **(6 pp., fundamental U.S. case on personal jurisdiction)**

Response Reward Systems v. Meijer, Inc., 189 F. Supp. 2d 1332 (M.D. Fla. 2002) (11 pp.)

Snowney v. Harrah's Entertainment, Inc., 34 Cal. 4th 1054, 112 P.2d 28 (2005) (18 pp.)

Optional Reading: Daimler AG v. Bauman (Sp. Ct. 2014) (46 pp. -- relatively recent Supreme Court case on international jurisdiction)

Geist: Is There a There There? (64 pp. -- deep dive into Internet jurisdiction)

Citron: Minimum Contacts in a Borderless World (63 pp. -- for reference only)

Long-Arm Statutes (Vedder Price) (162 pp. -- for reference only)

5. INTERNET JURISDICTION (Tuesday, Sep. 14, 2021) – The Internet has raised a host of new jurisdictional questions because packets follow unpredictable paths during transmission and might pass through multiple states without the knowledge or intent of the sender. Does each of these states have jurisdiction in a crime or breach of contract occurs as a result of the transmission? If not, which states should have jurisdiction and why?

Reading: Zippo Manufacturing v. Zippo Dot Com Inc., 952 F.Supp. 1119 (W.D. Pa. 1997) (7 pp.)

Sioux Transportation., Inc. v. XOP Logistics, Inc. et al. (W.D Ark., Dec. 22, 2015) (15 pp.)

Best Odds Corp. v. iBus Media Limited (D. Nev. 2014) (17 pp.)

Burdick v. Superior Court of Orange County (Cal. App., Feb. 14, 2015) (26 pp.)

Intercon, Inc. v. Bell Atlantic Internet Solutions, Inc., 205 F.3d 1244 (10th Cir., March 9, 2000) (5 pp.)

Williams v. America OnLine, Inc.,(2001 Mass. Super. No. 00-0962) (4 pp.)

Wilson v. RIU Hotels & Resorts (E.D. Pa. 2011) (4 pp.)

Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 433 F.3d 1199, 1246 (9th Cir. 2006), (34 pp.) overruling the district court decision. (10 pp.)

Optional Reading: NOTE: there is a lot of content here. Pick one or two references if you want depth on this topic.

Boone: Bullseye! Why a "Targeting" Approach to Jurisdiction in the E-Commerce Context Makes Sense Internationally (50 pp.)

Butler v. Beer Across America, 83 F.Supp. 2d 1261 (N.D. Ala. 2000) (7 pp)

Gladstone: Determining Jurisdiction in Cyberspace (14 pp.)

Gray: Minimum Contacts in Cyberspace (16 pp.)

Moore: Cyberjurisdiction 6 pp., VERY GOOD)

Spencer: Jurisdiction and the Internet (56 pp.)

Twentieth Century Fox, Inc.. v. ICraveTV, 53 U.S.P.Q. 2d 1831 (W.D. Pa. 2000) Read Complaint. (36 pp.) Read Injunction.(2 pp.)

Wimmer & Pogoriler: International Jurisdiction and the Internet (15 pp.)

Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 433 F.3d 1199, 1246 (9th Cir. 2006), (34 pp.) overruling the district court decision. (10 pp.)

Topic 2 - EVIDENCE

6. COMPUTER EVIDENCE (Thursday, Sep. 16, 2021) – All trials involving proving facts. The rules of evidence define which methods can be used to prove facts at trial. Some of these, such as the hearsay rule, are quite complex. Others, which may appear simple, may have their meaning stretched when computers are involved. For example, suppose you dispute that you clicked "I accept" on a license agreement for an Internet download? How does the company prove you did? This lecture concentrates on the use of computer-based evidence in trials.

Reading: Federal Rules of Evidence (Articles I, IV, VIII, IX, X)

Kerr, Computer Records and the Federal Rules of Evidence (9 pp.)

Legal Status of Optical Disk and Electronic Imaging Systems (4pp.)

Rostoker & Rines, Computer Jurisprudence (15 p. excerpt)

Sutherlin v. State of Indiana, 784 N.E.2d 971 (Ind. Ct. App. 2003) (3 pp.)

What is hearsay? (short video clip)

What is not hearsay? (short video clip)

Optional Reading: Chung & Byer, The Electronic Paper Trail (21 pp.)

State of Tennessee v, Drake (Tenn. Crim. App. June 6, 2005) (26 pp.)

State of Tennessee v. Farner, 66 S.W.3d 188 (Tenn. 2001) (22 pp.)

[Wolfson, Electronic Fingerprints, Doing Away with the Conception of Computer-Generated Records as Hearsay](#) (24 pp.)

7. SCIENTIFIC EVIDENCE (Tuesday, Sep. 21, 2021) – Some trials involve opinions. For example, what was the cause of the Minneapolis bridge collapse? Did the software substantially perform according to its manual? Does this technological measure effectively control access to a copyrighted work or not? These are scientific matters not within the skill of either the judge or jury, so must be proven through expert testimony. Who is an expert? How do they qualify? What happens when experts disagree (they always do in a lawsuit)? How can an expert be challenged? When are scientific theories recognized by courts?

Reading: [Daubert v. Merrell Dow, 509 U.S. 579 (1993)](#) (14 pp. -- the principal case on expert qualifications)

[Frye v. United States, 293 F. 1013 (App. D.C. 1923)](#) (2 pp. -- Pennsylvania state courts still follow Frye)

[Mike's Train House v. Lionel, 472 F.3d 398 (6th Cir. 2006)](#) (13 pp.)

[U.S. v. Frabizio (D. Mass.)](#) (43 pp.)

Optional Reading: [Commonwealth v. Serge, 896 A.2d 1170 (Pa. 2006), *cert. den.* (2006)](#) (26 pp.)

[Giannelli, Expert Qualifications & Testimony](#) (22 pp.)

[Kolar, Scientific and Other Expert Testimony](#) (30 pp.)

[Clausen v. M/V New Carissa, 339 F.3d 1049, 1056 (9th Cir. 2003)](#) (31 pp.)

[People v. LeGrand, 196 Misc 2d 179 (Sup Ct, NY County 2002)](#) (13 pp.)

[Selbak, Digital Litigation](#) (22 pp.)

[Affidavit of Benjamin Edelman](#) (33 pp. on spyware)

[Williamson & LaVecchia, Admissibility of Expert Testimony](#) (11 pp.)

Topic 3 - EBUSINESS LAW

8. SOFTWARE LICENSES (Thursday, Sep. 23, 2021) – What can you do with a software you buy in a store or download from the Internet? What are the conditions under which such software is provided? What is the effect of clicking "I accept" on a license agreement that is too long to read? What about freeware, shareware and open source software? Are shrinkwrap, clickwrap and browsewrap agreements enforceable?

Reading:[ProCD v. Zeidenberg, 86 F.3d 1447 (7ᵗʰ Cir. 1996)](#) (7 pp.)

[Comb v. PayPal, 218 F. Supp. 2d 1165 (N.D. Cal. 2002)](#) (11 pp.)

[Affinity Internet v. Consolidated Credit, 920 So. 2d 1286 (Fla. Dist. Ct. App. 2006)](#) (4 pp.)

The Enforceability of Shrinkwrap License Agreements On-Line and Off-Line, Hayes (16 pp.)

Optional Reading: Berkson et al. v. Gogo LLC et al. (S.D.N.Y. April 9, 2015) **(83 pages but a very thorough analysis of mutiple types of software licenses)**

Specht v. Netscape Communications Corp., 306 F.3d 17 (2nd Cir.2002) (37 pp.)

Vitacost.com v. McCants (Fla. 4th Dist. Ct, App, Feb. 15, 2017) (7 pp.)

Artifex Software, Inc. v. Hancom, Inc. (N.D. Cal., Apr. 25, 2017) (11 pp.)

Fundamentals of Software Licensing, Classen (Beware -- 93 pp.)

The GNU Public License (7 pp.)

Taking the Case: Is the GPL Enforceable?, Wacha (42 pp.)

9. ELECTRONIC TRANSACTIONS (Tuesday, Sep. 28, 2021) – Ordinary sales transactions in the brick and mortar world are governed by the Uniform Commercial Code, some form of which has been enacted in 49 states. The country has been struggling, though, to develop a consistent statute that applies to electronic transactions, in which the traditional methods of identifying parties and inspecting goods are not available. Two competing statutes are the Uniform Electronic Transactions Act (UETA) and the Uniform Computer Information Transactions Act (UCITA), which we will compare and contrast.

Reading: E-Sign Act (14 pp.)

Overview of the Uniform Computer Information Transactions Act (UCITA) (12 pp. -- a vendor-friendly statute enacted by only two states)

Electronic Signatures and Records Under ESIGN, UETA and SPeRS (10 pp.)

Optional Reading: JBB Investment Partners v. Fair (Cal. App. 1st Dist., Dec. 5, 2014) (27 pp.)

Uniform Electronic Transactions Act (65 pp.)

Legal Issues in Open Source and Free Software Distribution, Nimmer (88 pp.)

Finding Common Ground in the World of Electronic Contracts, Dickens (34 pp.)

Topic 4 - PERSONAL INTRUSIONS

10. DATA PRIVACY (Thursday, Sep. 30, 2021) – Privacy is well-covered in other ISR courses, so we will just scratch the surface to interest you in further study of the subject. Exactly what is data privacy and why do people want it? We'll look at the patchwork of statutes around the country that emphasize various aspects of data privacy and then console ourselves over the lack of any coherent body of data privacy law in the United States. EU General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA), data breach notification.

Reading:

GDPR Pocket Guide (22 pp.)

[CCPA Guide](#) (32 pp.)

[GDPR vs. CCPA](#) (7 pp.)

[Carpenter v. U.S., 585 U.S. ___ (Sp. Ct. 2018)](#) (119 pp. -- important case, but scan only)

[Tattered Cover, Inc. v. City of Thornton, 44 P.3d 1044 (Colo. 2002)](#) (21 pp. -- important case on privacy of book purchases)

Optional Reading (GDPR and CCPA): [Overview of the GDPR](#) (44 pp.)

[Understanding the GDPR](#) (44 pp.)

Optioanl Reading (anonymity, data breach):

[In re Subpoena Duces Tecum To America Online. Inc. Va. Cir. Ct., Fairfax Cty., Misc. Law No. 40570, (Feb. 7, 2000)](#) *(11 pp.)*

[America Online, Inc. v. Anonymous Publicly Traded Co](#).[, 542 S.E.2d 377 (Va. 2001)](#) *(7 pp.)*

[Revenge porn news article](#). *See also civil case: [Jacobs v. Seay (Cir. Ct. Miami-Dade Cty. Fla., complaint filed April 18, 2013)](#).* *See Ryan Seay's [response page](#).*

[Data Breach Charts](#) (Baker Hostetler). (18 p. summary of data breach notification laws across the U.S.)

[Reno v. Condon, 528 U.S. 141 (2000)](#) (10 pp.)

[In re Verizon Internet Services Subpoena, 240 F.Supp.2d 24 (D.D.C. 2003)](#) (19 pp.)

[O'Grady v. Superior Court of Santa Clara County; Apple Computer, Inc., Real Party in Interest, Ct. App. Calif., 6th App. Dist. (May 26, 2006)](#) (69 pp.)

Optional Reading (employer monitoring):

[McLaren v. Microsoft, No. 05-97-00824 (Tex. Ct. App. May 28, 1999)](#) (4 pp.)

[Pisciotta v. Old National Bancorp, 49 F.3d 629, (7th Cir. Aug. 23, 2007)](#) (21 pp.)

[Tiberino v. Spokane County, P.3d 1104, 1108 (Wash. Ct. App. 2000)](#) (11 pp.)

11. DEFAMATION, FREE SPEEECH AND SECTION 230 (Tuesday, Oct. 5, 2021) – With websites, Twitter, Facebook and other social media, everyone is now a publisher and, for that matter, an instant publisher. This has given rise to fake news, doxing, revenge porn and other such acts. There has always been a tension between freedom of speech and one's right not to be defamed or embarrassed through publication of false information (or wrongful revealing of true information). Under the Communications Decency Act (Section 230), when is a website liable for the positings of its subscribers? Because the Internet is a worldwide medium, it is possible to cause great damage in another country without leaving home, and, more important, without subjecting oneself to the jurisdiction of foreign courts. Or is it? Can

imprudent social media posts be retracted so they cannot be used against the poster in the future? Is it legal to collect a person's posts and archive them, hoping to use them again the poster in the future?

Reading: [Bosky, Defamation in the Internet Age](#)

[Defamation in the Internet Age](#) (Same title, different article!)

[Communications Decency Act](#)

[Jones v. Dirty World (E.D. Kentucky, Jan. 21, 2011)](#). Appeal: [Dirty World LLC v Jones, 755 F.3d 398 (6th Cir. 2014)](#)

Optional Reading: [Aggergaard, Three Defenses to Consider](#)

[Vogel v. Felice (26 Cal. Rptr. 3d 350 (2005)](#)

[Fair Housing Council v. Roommate.com, LLC, 521 F.3d 1157 (9th Cir. 2008)](#) (long but well-written)

Topic 5 - INTELLECTUAL PROPERTY

12. TRADE SECRETS (Thursday, Oct. 7, 2021) – A good rule of thumb is that something is a trade secret if it is secret and relates to trade (really). All fast-moving technological fields, particularly the computer field, are replete with trade secrets. What methods are legitimate to discover a competitor's trade secret? Reverse engineering? What happens if improper methods (theft, bribery) are used? When does a trade secret cease being a trade secret?

Reading: [Uniform Trade Secrets Act](#) (3 pp.)

[Paramanandam v. Herrmann, 827 N.E. 2d 1173 (Ind. App. 2005)](#) (6 pp.)

[Syncsort v. IRI (D. N.J. 2011)](#) (36 pp.)

[Booloon v. Google (Cal. App., May 25, 2012)](#) (14 pp.)

[ConnectU v. Facebook complaint](#) (20 pp.)

[Economic Espionage Act, 18 U.S.C. §1832](#) (1 p.)

Optional Reading: [Syncsort v. IRI (D. N.J. 2011)](#) (36 pp.)

[Ford Motor Co. v. Lane, 67 F.Supp.2d 745 (E.D. Mich. 1999)](#) (11 pp.)

[Cross Media Marketing Corp. v. Marie Nixon, 06 Civ. 4228 (MBM) (S.D.N.Y., August 11, 2006)](#) (46 pp.)

[Jennings v. Election Canvassing Commission](#) (7 pp.).   [Appellate decision (3 pp.)](#)

13. CONFIDENTIALITY AGREEMENTS (Tuesday, Oct. 12, 2021) – Almost every company in the computer industry requires employees to sign confidentiality and non-competition agreements. Exactly

what can they require people to sign and what can be enforced in court? Surprisingly, there are vast differences among the states concerning these contracts.

Reading: HP Complaint Against Mark Hurd, filed Sept. 10, 2010 (51 pp. -- only the first 18 are significant)

Mark Hurd's Separation Agreement from Hewlett-Packard (7 pp.)

California Reject Inevitable Disclosure Doctrine (2 pp.)

Schlage Lock Co. v. Whyte (Cal. App. 4th Dist., Sept. 12, 2002)

Optional Reading: NEC nondisclosure agreement (5 pp.)

Earthweb, Inc. v. Schlack, 71 F.Supp.2d 299 (S.D.N.Y. 1999), aff'd in part (2d Cir. 2000) (8 pp.)

Protecting Trade Secrets After Mass Dissemination on the Internet (24 pp.)

Liebert Corp. v. Mazur, 357 Ill. App. 3d 265, 827 N.E. 2d 900 (2005) (18 pp.)

Johnson v. Benjamin Moore, 347 N.J. Super. 71; 788 A.2d 906 (AD 2002) (13 pp.)

LECTURE 13 IS THE LAST LECTURE IN 17-662

OCT. 13-14: 17-662 TAKE-HOME FINAL EXAM

14. COPYRIGHT (Thursday, Oct. 14, 2021) Copyright is one of the hottest topics in computer law right now and will occupy us for two weeks. This lecture deals generally with the rights of copyright owners and what is copyrightable and what is not, the policy behind copyright and the relationship between the cost of copying and the tendency to infringe.

Reading: Feist Publications v. Rural Tel. Service Co., 499 U.S. 340 (1991) (13 pp. -- critical case: the demise of "sweat of the brow" copyright)

Naruto, a Crested Macaque, by and through his Next Friends, People for the Ethical Treatment of Animals, Inc. v. Slater et al. (9th Cir., 2018) (the "Monkey Selfie" case)

Morrissey v. Procter & Gamble, 379 F.2d 675 (1st Cir. 1967) (2 pp.)

Optional Reading: Copyright and New Technologies (15 pp.)

Let's Swap Copyright for Code, by Christina Reger (31 pp.)

New York Times Co. v. Tasini, 533 U.S. 483 (2001) (21 pp -- applies ejusdem generis) Dissenting opinion. (20 pp.)

15. COPYRIGHT FAIR USE (Tuesday, Oct. 21, 2021)– What use can be made of the copyrighted work of others? This is somewhat defined in the United States Code at 17 U.S.C. §107, but court decisions interpreting this section vary widely. We'll talk about sampling, and the safe harbor for ISPs, the Google (YouTube) and Internet Archive cases.

Reading: American Geophysical Union v. Texaco, 60 F3d 195 (2d Cir. 1994) (29 pp. Not all "research" use is "fair use")

Author's Guild v. Google (2d Cir., Oct. 16, 2015) (51 pp. - VERY IMPORTANT CASE ON FAIR USE BY GOOGLE BOOKS. Skim for main ideas.)

Sony Corp. v. Universal City Studios, 464 U.S. 417 (1984) (the Betamax case) (43 pp. Explains why recording TV shows is fair use)

Use My Photo (NY Times, Oct. 1, 2007) (3 pp.)

Optional Reading: CoStar Group, Inc. v. LoopNet, Inc., 373 F.3d 544 (4th Cir. 2004) (26 pp.)

Sony v. Connectix, 203 F.3d 596 (9th Cir. 2000) (12 pp.)

LiveNation Motor Sports, Inc. v. Davis, 81 USPQ 2d 1267 (N.D. Tex. 2006) (12 pp.)

Perfect 10, Inc. v. Amazon.com, Inc., 487 F.3d 701 (9th Cir. 2007) (12 pp.)

Parker v. Google (3d Cir. 2007) (48 pp.)

16. COPYRIGHT IN COMPUTER PROGRAMS (Thursday, Oct. 21, 2021) – Computer programs contain both human expression and utilitarian components; that is, they do not merely express concepts but serve as instructions to real machines to perform useful functions. There has always been tension as to whether computer programs ought to be copyrightable at all, since some believe that granting a copyright on a program is effectively conferring a long-term patent on technology that probably has a short lifetime. This tension has given rise to a great deal of litigation and now almost every software copyright case filed meets with a defense that the program was not copyrightable in the first place. We will explore the limits of what is copyrightable and what is not. Abstraction-filtration-comparison. The Lotus v. Borland and Lexmark cases. Are APIs copyrightable? Oracle v. Google.

Reading: Copyright Infringement of Computer Software (3 pp.)

Computer Associates International, Inc. v. Altai, Inc., 982 F.2d 693 (2d Cir. 1992) (22 pp.)

Lexmark Int'l, Inc.. v. Static Control Components, 387 F.3d 522 (6th Cir. 2004)(32 pp.)

Lotus v. Borland, 49 F.3d 807 (1st Cir. 1995) (20 pp.)

Oracle v. Google,750 F.3d. 1339 (Fed. Cir. 2014) , (69 pp. -- skim for ideas. Controverisal ruling that APIs are copyrightable

Optional Reading: The "Abstraction, Filtration, Comparison Test" (Ladas & Perry LLP) (4 pp.)

Abstraction and filtration of GNU Sort (5 pp.)

17. DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA) (Tuesday, Oct. 26, 2021) – The session is devoted to the extremely controversial statute the "Digital Millennium Copyright Act" (17. U.S.C. §1201ff),

which fundamentally makes it a crime to circumvent various forms of data and software protection, such as breaking copy protection or encryption on files to allow them to be copied.

Reading: [A&M Records v. Napster, 114 F.Supp.2d 896 (N.D. Cal. 2000)](#), aff'd 239 F.3d 1004 (9th Cir. 2001, 16 pp.), [aff'd after remand, 284 F.3d 1091 (9th Cir. 2002)](#) (56 pp., skim for ideas)

[Digital Millennium Copyright Act (U.S. Copyright Office Summary)](#) (18 pp.)

[UMG Recordings, Inc. v. mp3.com, 92 F. Supp. 2d 349 (S.D.N.Y. 2000)](#) (10 pp.)

[Online Intellectual Property Cases Test Copyright, Free Speech Tension](#) (5 pp.)

Optional Reading: [American Broadcasting Cos. v. Aereo, Inc., 134 S.Ct. 896 (June 25, 2014)](#) (35 pp. The latest word on fair use of entire works.)

[From Sony to Grokster](#) (47 pp.)

[Digital Rights Management](#) (18 pp.)

[MGM v. Grokster, 545 U.S. 913 (2005)](#) (55 pp.)

[Universal City Studios et al. v. Reimerdes, 111 F.Supp.2d 194 (S.D.N.Y. 2000)](#) (51 pp.)[, aff'd 273 F.3d 429 (2nd Cir. 2001)](#) (25 pp.)

[Digital Rights Management II](#) (22 pp.)

[Online Policy Group v. Diebold, 337 F. Supp. 2d 1195 (N.D.Cal. September 30, 2004)](#) (16 pp.)

18. PATENTS (Thursday, Oct. 28, 2021) – Huge amounts of money can be awarded in patent cases, e.g. hundreds of millions of dollars or more. What is a patent? The tests for patentability: novelty, usefulness and non-obviousness. What is obvious and who decides? The patent examining process. What are the parts of a patent and what constitutes infringement?

Reading: [An Overview of the US Patent System](#) (6 pp.)

[The Patent, Used as a Sword, by Duhigg & Lohr](#) (13 pp. , of critical importance)

[Legal FAQ: Introduction to Patent Law](#), (4 pp, Reasoner & Morrow)

[Patent Litigation for High Technology and Life Sciences Companies](#), (17 pp., Fenwick & West)

[Hartman et al. U.S. Patent 5,960,411](#) (19 pp., the famous Amazon 1-click patent. Jeff Bezos is one of the inventors)

[Loebner U.S. Patent 6,019,393](#) (Example of a silly patent that should never have issued.)

Optional Reading: [The Admissibility and Utility of Expert Legal Testimony in Patent Litigation](#),
Pollack

[Patent Law Principles and Strategies](#), (29 pp., Auerbach)

[Yang et al. U.S. Patent 6,536,068](#) (31 pp. The toothbrush patent discussed in class)

[KSR International v. Telelex, 127 S. Ct. 1727 (2007)](#) (31 pp., major Supreme Court case on obviousness)

19. SOFTWARE PATENTS (Tuesday, Nov. 2, 2021) – A huge number of software patents are now being issues, at the rate of hundreds per week. They have produced a great deal of litigation and consternation in the software industry. We will look at what is patentable about software and algorithms and examine some the challenges being brought against software patents.

Reading: [Alice Corporation Pty. Ltd. v. CLS Bank International et al.](#) (Sup. Ct. 2014) (21 pp.)

[Impression Products, Inc. v. Lexmark International, Inc](#). (Sup. Ct. 2017) (26 pp.)

[IP v. Red Hat Complaint](#) (5 pp., a typical but brief patent complaint)

[Software Patent Litigation](#) , (17 pp., McDonald et al.)

[Levergood et al. U.S. Patent 5,708,780](#) (68 pp., a fundamental eCommerce patent, later ruled obvious. Skim this -- no need to read it all.)

Optional Reading for those interested in software patents: [Patent Scope and Innovation in the Software Industry](#), (58 pp, Cohn & Lemley)

[An Empirical Look at Software Patents](#), (53 pp., Bessen)

[Emerging Claim Formats for Software Inventions](#) (46 pp., a good review of IP protection for software)

20. ANATOMY OF PATENT CASES: MIRROR WORLDS V. APPLE, APPLE V. SAMSUNG (Thursday, Nov. 4, 2021) – In October, 2010, a small company called Mirror Worlds won a jury award of $625,000,000 against Apple Computer for patent infringement (later vacated). Mirror Worlds claimed that its patents were infringed by Apple's iPhone user interface. In August, 2012, Apple won over $1 billion against Samsung for infringement of its patents on the iPhone user interface. We will study these cases in detail, including various decisions made by the courts and the juries.

Reading: [Complaint in Mirror Worlds v. Apple](#) (7 pp.)

[Freeman et al. U.S. Patent 6,725,427](#) (17 pp, the Mirror Worlds patent)

[Jury Verdict Form in Mirror Worlds v. Apple](#) (2 pp.)

[Markman Opinion in Apple v. Samsung](#) (9 pp.)

[Samsung's Proposed Voir Dire Questions](#) (3 pp.)

[Jury Verdict Form in Apple v. Samsung](#) (20 pp.)

Optional Reading: [Markman Opinion in Mirror Worlds v. Apple](#) (40 pp., a thorough claim construction opinion)

[Mirror Worlds Bill of Costs](#) (2 pp.)

[Ording U.S. Patent 7,469,381](#) (59 pp., one of the patents in Apple v. Samsung)

[Ording et al. U.S. Patent 7,864,163](#) (49 pp., one of the patents in Apple v. Samsung)

[Platzer et al. U.S. Patent 7,844,915](#) (52 pp., one of the patents in Apple v. Samsung)

21. DOMAIN NAMES (Tuesday, Nov. 9, 2021) – How domain names are assigned and registered. What happens when trademark owners have a dispute over the same name, e.g., someone registers heinz.biz and H. J. Heinz objects? Who wins? (You probably know the answer to that, but what are the rules that apply in less obvious situations?) Domain name trickery: cybersquatting, metatagging, framing and typopiracy..

Reading: [Full Sail, Inc. v. Spevak (Case 6:03-cv-887-Orl-31JGG, M.D. Fla., 2003)](#) (15 pp., the District Court case)

[Full Sail, Inc. v. Spevak (WIPO Case D2003-0502)](#) (7 pp., the UDRP dispute)

[ICANN Uniform Dispute Resolution Policy](#) (6 pp.)

[Sharton, Domain Name Disputes: To Sue or Not to Sue](#) (6 pp.)

[Visa International Service Association v. JSL Corporation (D. Nev. Dec. 27, 2007)](#) (16 pp., regarding the use of "e" as a prefix in a trademark)

[Zyliss AG v. Gourmet Kitchen (National Arbitration Forum Claim FA0306000162069)](#) (6 pp., the Xyliss domain name dispute)

Optional Reading: [Avery Dennison v. Sumpton, 189 F.3rd 868, 880-81 (9th Cir. 1999)](#) (6 pp.)

[Greenstone, Overview of Internet Domain Law](#) (23 pp.)

[Cable News Network v. CNNEWS.COM, 56 Fed. Appx. 599 (4th Cir. 2003)](#) (6 pp, court transfer of a domain name)

[Geico v. Google, 330 F.Supp. 2d 700 (E.D. Va. 2004)](#). (21 pp., use of "Geico" on Google.)

[Memorandum of Understanding between U.S. Department of Commerce and ICANN](#) (7 pp., the document by which ICANN obtained control of domain names)

[Moseley v. V-Secret Catalogue, Inc., 537 U.S. 418 (2002)](#) (19 pp, Supreme Court test for trademark dilution -- Victor's Secret v. Victoria's Secret)

[Panavision v. Toeppen, 141 F.3d 1316 (9th Cir. 1998)](#) (13 pp.)

[UDRP Proceedings Indexed by Name](#) (Website)

[Washington Post v. Total News, (Case No. 97 Civ. 1190 (PKL), S.D.N.Y., filed Feb. 20, 1997)](#) (5 pp.)

Topic 6 - GOVERNMENT REGULATION

22. AI AND ROBOTICS LAW (Thursday, Nov. 11, 2021) –How is society to deal with intelligent systems that behave in ways not anticipated by their creators, but which can injure people? What is a robot legally? What is artificial intelligence legally? How is society to deal with intelligent systems that can create other intelligent systems? Can such systems be legally regulated and controlled? We will look at current attempts to assign liability in such instances, including in robotics, autonomous vehicles and unmanned aircraft system (UAS: drones).

Reading: Saipan et al., [Are Robots Human?](#) (8 pp.)

Scherer, [Regulating Artifical Intelligence Systems](#) (48 pp.)

Gless et al., [If Robots Cause Harm, Who is to Blame?](#) (23 pp.)

Petit, [Law and Regulation of Artifical Intelligence and Robots](#) (31 pp.)

Optional Reading: [Machines Without Principals: Liability Rules and Artifical Intelligence](#) (34 pp.)

Calo, [Robots in American Law](#) (45 pp.)

Balkin, [The Path of Robotics Law](#) (17 pp.)

Lunders et al., [Autonomous vehicles: The legal landscape in the US](#) (26 pp.)

Joh, [Policing Police Robots](#) (28 pp.)

Vacek, [The Next Frontier in Drone Law](#) (30 pp.)

Simon, [The Intersection of Drones and Insurance](#) (53 pp.)

23. INTERNET TAXATION (Tuesday, Nov. 16, 2020) – Generally, when you buy something that is shipped from another state into Pennsylvania you don't pay sales tax to either Pennsylvania or the state of origin. (We'll look at exactly why this is so.) Most Internet sales involve an interstate shipment, so the expansion of electronic commerce is depriving states of an increasing share of tax revenue. To counteract this trend, various states are devising new taxes on Internet use, which threatens the development of electronic business. This topic was the subject of a major Supreme Court decision in 2018. Congress may also step into the fray because of its power to regulate interstate commerce and has proposed a new statute to deal with the problem. We will look at the current Internet tax situation in the United States. This topic is more interesting than you might think.

Reading: [National Bellas Hess v. Dep't of Revenue of Illinois, 386 U.S. 753 (1967)](#) (8 pp., the original ruling that interstate shipments are not subject to sales tax)

[Quill Corp. v. North Dakota Tax Comm'r, 504 U.S. 298 (1992)](#) (9 pp., reaffirming Bellas Hess 25 years later)

[South Dakota v. Wayfair, Inc. (Supreme Court, June 21, 2018)](#) (Landmark case overruling Bellas Hes and Quill)

[Internet Tax Freedom Act](#) (7 pp.)

[Direct Marketing Association v. Brohl (U.S. Supreme Court, March 3, 2015)](#) (22 pp., effect of the Tax Injunction Act on requirement for retailers to identify customers)

Optional Reading: [Amazon Pushes Hard to Kill a Tax](#) (3 pp., NY Times, Sept. 5, 2011)

[Making the Internet Tax Freedom Act Permanent Could Lead to a Substantial Revenue Loss for States and Localities](#), Mazerov (23 p. lobbying document)

[St. Tammany Parish Tax Collector v. Barnesandnoble.com, et al., Civ. Act. No. 05-5695 (E.D. La., March 22, 2007)](#) (19 pp.)

[Virginia Tax Commissioner Ruling 06-103 (2006)](#) (4 pp.)

24. TECHNOLOGICAL ANTITRUST (Thursday, Nov. 18, 2021) – Computer technology has engendered previously unheard-of methods of stifling competition, for example, by disabling a computer's ability to install or use a competitor's software. Microsoft has been a pioneer and primary exponent of such techniques. For example, Google alleged that Microsoft Vista deliberately slowed down Google desktop search to favor Microsoft Desktop Search. Naturally such behavior has antitrust implications, so we will look at applicable antitrust law and cases involving purely automated actions, such as disabling competitors' software. Apple was recently found to have engaged in price-fixing in sales of eBooks. But what did it do exactly and why was it illegal?

Reading: [Google's Smartphone Patents](#) (3 pp., NY Times, October 10, 2012)

[Sherman Antitrust Act, 15 U.S.C. §1ff (1890)](#) (2 pp.)

[Clayton Antitrust Act, 15 U.S.C. §12ff (1914)](#) (7 pp.)

[Microsoft Antitrust Judgment (D.D.C. Nov. 12, 2002)](#) (19 pp.)

Optional Reading: [Ticketmaster v. RMG Technologies (C.D. Cal. Oct. 16, 2007)](#) (32 pp.)

[Unilateral Technology Suppression](#), (13 pp., Chin)

[Department of Justice Antitrust Division Manual](#) (115 pp. Just scan this.)

25. NET NEUTRALITY AND GOVERNMENT REGULATION OF THE INTERNET (Tuesday, Nov. 23, 2020) – "Net neutrality" is the principle that service providers and carriers shoul treat all Internet packets equall, regardless of source, destination, size or content. It conflicts with free market forces and also has antitrust implications. We will look at how governments, both U.S. and others, can force carriers to be net neutral.

Reading: Radia & Melugin, [Net Neutrality Primer](#) (9 pp.)

Optional Reading: [FCC Notice of Proposed Rulemaking](#) (Apr. 27, 2017)

[U.S. Telecom Association v. FCC](#) (No. 15-603, D.C. Cir. May 1, 2017) 109 pp.

[EU Net Neutrality Policy and the Mobile Sector](#) (33 pp., Alexiadis)

NOV. 25 IS THANKSGIVING. NO CLASS.

26. STARTUPS AND VENTURE CAPITAL (Tuesday, Nov. 30, 2021) – Money is a critical resource for a startup company. We will look at how money is raised, the various stages of investment, securities law, and corporate formation.

Reading: [Seed Series ABC](#) (4 pp. on the differences between financing rounds A, B and C)

[Startup Law 101](#) (24 pp.)

[Venture Financing Overview](#) (14 pp.)

Optional Reading: [Legal Resource Guide for Startup Entrepreneurs](#) (60 pp.)

27. COMPUTER CRIME (Thursday, Dec. 2, 2021) – Computers have provided unparalleled tools for the commission of crime and offer equally unparalleled methods of avoiding detection. Because so many businesses are completely dependent on computers, servers have become a target for extortion attempts, competitive attacks, theft of trade secrets and hacking with a variety of objectives, some as simple as publicizing causes. The U.S. has been slow to cope with advancements in computer crime because of a fundamental principle of criminal law: crime statutes are strictly construed. Simply stated, this means that an act is not a crime unless a statute makes it explicitly criminal. There are no "common law" computer crimes. With legislatures slow to draft laws to keep pace with criminals, there is a continuing gap between what is legal and what should be illegal. The first lecture will deal with computers as instruments of crime. Computer Fraud and Abuse Act, crimes against computer systems: denial of service attacks, vandalism, cyberterrorism.

Reading:[Computer Fraud and Abuse Act](#) (6 pp.)

[Pennsylvania Unlawful Use of Computer Statute, 39 Pa.C.S. § 3933](#) (3 pp.)

[Van Buren v. United States, 593 U.S.--- (2021)](#) (37 pp.)

[In re Reynoso, 477 F.3d 1117 (9th Cir. 2007)](#) (15 pp.)

[People v. World Interactive Gaming (Sup. Ct. N.Y.Co., July 24, 1999)](#) (8 pp.)

Optional Reading: [Hageseth v. Superior Court of San Mateo County, Cal. App. (1st Dist., May 21, 2007)](#) (37 pp., unusual case in which a court is sued)

[First Do No Harm: The Problem of Spyware, Crawford](#) (43 pp., legal status of spyware)

[Prosecuting Computer Crimes](#) (213 pp., Department of Justice manual)

[State Criminal Jurisdiction in Cyberspace: Is There a Sheriff on the Electronic Frontier?](#) (7 pp., Berg)

[Indictment of J. John Ancheta under the Computer Fraud and Abuse Act](#) (52 pp.)

TAKE-HOME FINAL. DATE TO BE DETERMINED..