Advanced Intellectual Property Law Seminar:
Technology and Entertainment
Course Number 463-001
2 Credits

George Mason University School of Law
Professor Scott Bain

GENERAL INFORMATION

Class Meetings: Room 348, Hazel Hall, Wednesdays 8:00 p.m. - 9:50 p.m.
Instructor email: sbain@comcast.net, sbain@siia.net
Instructor phone: 703-967-9655 (cell)

I do not have regular office hours at the Law School, but I am happy to answer questions by email, by phone, or call/email me and we can set up a time to discuss. I will also usually be available to answer questions after class.

MATERIALS

The course materials include cases, statutes, websites, articles, and other documents that you may access online through Lexis/Westlaw or the Internet. We will not be using a traditional casebook or textbook. I may provide supplemental handouts or additional/different assignments as the seminar progresses. Reading assignments for the first 4 weeks of the course are listed in the schedule below, along with all of the course topics.

GOALS FOR THE COURSE

This course is designed to (1) refine your creative problem solving ability and analytical skills, as applied to novel or evolving legal issues – as many legal issues are, at the intersection of technology and entertainment; (2) sample the most current and important IP issues in the technology and entertainment fields today, providing you with the tools and background to work in these areas; (3) introduce you to the typical parties in these industries and examine real-life case studies of their legal issues and strategies; and (4) engage you in-depth on one topic of your choice, ending with a term paper that you may wish to publish (paper topic is subject to instructor approval).

Special guests from the entertainment and technology fields will supplement our discussions of some of the issues in the course, and provide you with insights on their cases, and possible paper topics.

PREREQUISITES

It is recommended that you have taken at least one introductory level intellectual property-related course, or have roughly equivalent experience. If you do not, please discuss with me.
GRADES - PAPER

There is no written exam in this course. Your grade will be based upon a paper. Papers should be submitted to me by email, and are due December 10, 2012. Papers should be approximately 25 double-spaced pages or more, in 12-point Times New Roman font with 1-inch margins. If you wish, you may instead use “law review style” with blue book formatting, in which case the paper should be approximately 15 or more single-spaced pages (with space between paragraphs). I am less concerned with the paper’s length than with the depth of thought, clarity of writing, persuasiveness of analysis, and sufficiency of legal support/citations.

The topic of your paper may be a further exploration of one of the subjects of this course, or some other intellectual property matter related to technology and/or entertainment. I will provide further guidance on the paper and possible topics during the course. Before the midpoint of the course, you will choose the topic of your paper and meet for my approval, and in a subsequent class you will briefly (a couple paragraphs) explain the topic to your classmates in order to solicit their ideas and feedback.

This is an interactive seminar, and you will be expected to prepare for and participate in class.

SCHEDULE AND ASSIGNMENTS

An overview of the schedule and course topics is below. There will be assigned reading in advance of each class. In addition, I will typically provide “optional” ideas for further reading on a topic if you wish. The optional reading may assist you with your paper, or other further study or professional preparation.

This course is intended to cover the most current, relevant intellectual property issues in the technology and entertainment industries. Thus, the assignments and schedule below may be supplemented during the course. I have provided the first four weeks of assignments here, and will further update the assignments for subsequent weeks on the first day of class.

Week 1 (Aug 22)

• Used Book Stores, Academic Software, Redbox, and iTunes: Licensing versus the First Sale Doctrine.

Assigned Reading:

- *Vernor v. Autodesk, Inc.*, 621 F.2d 1102 (9th Cir. 2010); 17 U.S.C. §109(a).
- *UMG Recordings, Inc. v. Augusto*, 628 F.2d 1175 (9th Cir. 2011).

- Examine the contract (whether termed a “license” or “user agreement” or “terms of use” etc.) of one of the software programs you use at home, such as Microsoft Word, Adobe Acrobat, iPhoto, etc. Are you permitted to transfer or sell your copy? Are you limited in the purposes for which you are allowed to use it? (e.g., non-commercial) Is there any argument that this contract is non-binding and/or that you actually own your particular copy of this software (whether you acquired a CD, downloaded to your hard drive, etc.)?

Optional:

- *Vernor v. Autodesk, Inc.*, 555 F.2d 1164 (W.D. Wash. 2008) (district court’s analysis that was subsequently overruled).

- *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996) (J. Easterbrook’s discussion of whether shrinkwrap licenses are valid contracts).


---

**Week 2 (Aug 29)**  
• The Flow of Copyrighted Works Across International Borders: the First Sale Doctrine versus the Importation Right.  
• Google Books, Kindle, and iPad: Copyright Fair Use and “e-borrowing” in Publishing.

Assigned Reading:

- 17 U.S.C. § 602(a)-(b)


- *Omega S.A. v. Costco Wholesale Corp.*, 541 F.3d 983 (9th Cir. 2008).

Optional:


- Amazon Kindle License Agreement and Terms of Use, Section 1: Digital Content, 
  http://www.amazon.com/gp/help/customer/display.html/ref=hp_left_cn?ie=UTF8 &nodeId=200506200


Week 3 (Sept 5)

• Google Books, Kindle, and iPad: Copyright Fair Use and “e-borrowing” in Publishing (Continued).
• ICANN (Internet Corporation for Assigned Names and Numbers) and the Expansion of Internet Top Level Domains: Cybersquatting and Limitations of Trademark Online.

Assigned Reading/Viewing:

- “Get Ready for the Next Big Thing” Internet Corporation for Assigned Names and Numbers, 


Optional:

- ICANN Uniform Dispute Resolution Policy (UDRP), 
  http://www.icann.org/en/help/dndr/udrp/policy (see particularly Section 2, Your Representations).


**Week 4 (Sept 12)**

**ICANN (Internet Corporation for Assigned Names and Numbers) and the Expansion of Internet Top Level Domains: Cybersquatting and Limitations of Trademark Online (cont’d).**

Assigned Reading:

- Transamerica Corp. v. Moniker Online Services, LLC, 672 F.Supp.2d 1353 (S.D. Fla. 2009); 15 U.S.C. § 1125(d)

- Compare the proposed “Rights Protection” rules in two of the competing applications for a new “.music” domain. (See Question 28 of each application, at the links below). How do these compare to the existing rules we have studied in the Transamerica case and other “.com” cybersquatting cases? What difficulties do you foresee in each applicant’s enforcement of their proposed policies, should they be awarded the .music top level domain?

  o .music application from .music LLC (group backed by major music industry trade associations): http://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1659

  o .music application from Google: http://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/528

**Week 5 (Sept 19)**

- Fantasy Leagues and the Right of Publicity.
- Hot News Doctrine/Copyright Preemption in Sports.
**Week 6 (Sept 26)**
- Secondary Liability in Copyright and Trademark Law: Where the Technology and Entertainment Battles are Fought (Part 1).
  - Case Studies: the Recording Industry and filesharing; the Motion Picture Industry and YouTube.

**Week 7 (Oct 3)**
- Secondary Liability in Copyright and Trademark Law: Where the Technology and Entertainment Battles are Fought (Part 2).
  - Case Studies: the iPod, the PC, and the VCR to the DVR.

**Week 8 (Oct 10)**
- The End of Copyright? Digital Locks and “Paracopyright.”
  - Audio Home Recording Act
  - Anti-circumvention Laws
  - International Approaches / Compulsory Royalties on Entertainment Devices
- Schedule discussion of paper topic with Prof. Bain.

**Week 9 (Oct 17)**
- Music Licensing, New Services, and New Media.

**Week 10 (Oct 24)**
- The Cottage Industry of Administrative Law in Broadcasting and Music: Rate settings, Consent Decrees and Compulsory Licenses
  - Rate Setting Cases in the Copyright Royalty Board: Satellite Radio, Internet Radio, Cable television, and more.

**Week 11 (Oct 31)**
- Blogs, Mashups, Facebook, and YouTube: User Generated Content, Fair Use, and Ownership of IP Online.

**Week 12 (Nov 7)**
  - Case study: Jammie Thomas, the million dollar file-sharer.
• The evolving common law/Constitutional punitive damage limits in tort law … to what extent do they impact the intellectual property *statutes*?

**Week 13 (Nov 14)**
  - Case Studies: Stop Online Piracy Act (SOPA), Protect IP Act (PIPA), America Invents Act (AIA), Orphan Works Act and the photography industry

**Thanksgiving Break**

**Week 14 (Nov 28)**

**December 10, 2012**
Deadline for your paper.