

**Fall Term, 1999**

**WWS 401a**

**Copyright Law, the Internet and the Public Interest**

Tuesdays, 7:30-10 p.m.

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General Approach of the PTF:

The law of intellectual property is currently undergoing significant change, both in the United States and abroad. Internationally, a new law of copyright was negotiated in Geneva, Switzerland under the auspices of the World Intellectual Property Organization (WIPO). The new WIPO treaties that resulted was the product of a series of interlocking global and national interests – corporate and other content providers ("rightsholders"), pipeline communications companies, public interest organizations, the countries of the developing world. The WIPO treaties required implementation by national legislation, however. In the United States, new legislation (The Digital Millennium Copyright Act of 1998 (DMCA)) was passed to replace the longstanding regime created by the Copyright Act of 1976. The DMCA introduces substantial change into the protection of copyright in the United States, and also includes provision for certain ongoing reviews of the implementation of the law.

The impetus for change in the law of intellectual property is the emergence of information technology. Our traditional law was based on the metaphor of intellectual products as physical property (hence the term "intellectual property"), but it is no longer clear the metaphor works in a digital world of instant communication, multiple (and sometimes anonymous) authorship and instantaneous copying and transmission of digital information. The interests at stake are enormous, since the nature of the ownership of publications of all kinds will determine the economic structure of the United States to a considerable extent. Large corporations based in the United States and elsewhere feel that the legal regime of copyright will be the single most important factor in their success or failure: Microsoft, Viacom, AT&T, Bertelsmann, Walt

Disney and so forth. For the most part, these organizations appear to want stronger property rights in their products in the digital environment than they had in the analog world, and they are understandably concerned to control "piracy" through digital copying.

But other organizations and interest groups in the United States fear that the delicate balance between the rights of intellectual property holders and those of "users" will be upset by the DMCA and emerging intellectual property regimes. The most obvious site of contest is the doctrine of "fair use," which holds that certain types of educational, journalistic and other uses of intellectual property are permissible without the consent of the rightsholder and without payment. Without such a doctrine we could not have public libraries, we could not make copies of scholarly works for research and teaching, we could not videotape television programs nor could we quote from books under review.

We will have guest experts representing all of the major contesting parties in the ongoing controversy – from publishers organizations, libraries and museums, universities, musical distributors, and congressional staff.

The role of the Task Force will be to provide advice to the Digital Futures Coalition on the range of interests in the various user communities organizations – educational, charitable, museum, library, artistic -- that need legal protection against the claims of the large rightsholder interests. The DFC is a loose coalition of such interests, but many user groups are also rightsholding groups (universities and museums are good examples), and it is not at all clear what general policy will best serve the coalition, and hold it together. Our challenge will be to define the public interest in information that needs to be balanced against the level of legal protection for intellectual property that is absolutely necessary to sustain intellectual creativity.

The statutory right of fair use will be central to our investigation, but paper topics might include: fair use in sec. 1201 of the DCMA, legislation against information piracy, distance education, the transmission of MP3 files over the internet, anti-circumvention legislation, database protection, Uniform Commercial Code provisions for licensing, electronic publication of books, magazines and newspapers, and more.

#### PTF Procedures and Internet Resources:

The Policy Task Force will meet every Tuesday evening for discussion sessions. Limited reading assignments (from a course materials to be distributed prior to the first meeting) will be made for the first few weeks in order to orient members of the

Task Force to general background on copyright law and electronic communications. These assignments are, however, exemplary, and you are encouraged to read on their own for fuller information and deeper understanding. Several outside experts will also visit the Task force, presenting the points of view of their organizations. They will further inform you, but, once again, you must take into account their person and institutional biases.

There are innumerable sources available electronically for the study of copyright and the Internet. Given the specific orientation of the PTF, you will want to pay special attention to is the page of the Digital Future Coalition: [www.dfc.org](http://www.dfc.org). But, among other sources, you may want to examine:

United States Copyright Office: [www.lcweb.loc.gov/copyright](http://www.lcweb.loc.gov/copyright)

National Initiative for a Networked Cultural Heritage: [www.ninch.org](http://www.ninch.org)

Association of Research Libraries: [www.arl.org](http://www.arl.org)

Journal of Electronic Publishing: [www.press.umich.edu/jep](http://www.press.umich.edu/jep)

Association of American Publishers: [www.publishers.org](http://www.publishers.org)

Copyright Clearance Center: [www.copyright.com](http://www.copyright.com)

ASCAP: [www.ascap.com](http://www.ascap.com)

BMI: [www.bmi.com](http://www.bmi.com)

Ass. of Am. Universities: [www.tulane.edu/~aau/AAUPolicy.html](http://www.tulane.edu/~aau/AAUPolicy.html)

Prof. Jessica Litman, Wayne State Law School: [www.law.wayne.edu/litman](http://www.law.wayne.edu/litman)

University of Texas page: [www.utsystem.edu/ogc/intellectualproperty](http://www.utsystem.edu/ogc/intellectualproperty)

Harvard report: [www.uis.harvard.edu/ucit\\_reportintprop.html](http://www.uis.harvard.edu/ucit_reportintprop.html)

J. Lindenbaum senior thesis (1998): [php.indiana.edu/~lindenba/john](http://php.indiana.edu/~lindenba/john)

Despite the apparent richness of sources available on the Web, you must be alert to the difficulties of determining the provenance and authority of electronic texts. This is very much part of the larger policy problem we will be studying.

The most important work you will do this term is the research you undertake for your own JP. I hope that each of you will make a proposal to me for a paper topic before the end of the third week of term. We will negotiate individual topics and the range of topics for the group, to be sure that most important bases are touched. But of course each of you will also work, along with me and the Graduate Consultant, on the Task Force report. This will be a joint effort, led by the Graduate consultant, that will take up much of our time at the end of term. Class discussions will be crucial not only to your own progress, but to that of the PTF as a whole. You will be graded on your performance in all of these activities, but I will give primary attention to your JP.

As you will see from the schedule below, we will spend the first few weeks reading and talking our way into the subject. For the next several weeks the emphasis will be

on researching (and then drafting) your JP. Each of you will then make an oral presentation of your draft to the Task Force, and set about revising it – a task that will probably take you into the beginning of the Reading Period. The last phase of the PTF will be trying to work out a common policy recommendation as the basis for the Task Force report.

A word to the wise: Each of you must formulate a precise question to be answered as the basis of your JP. It is essential that the policy question you address be well thought out before you begin your final research. The entire paper should be a concise, well-organized response to the policy question. The final paper should be no longer than 25 pages (a rule strictly enforced, since I will stop reading after page 25). Remember Dr.

Johnson's response when asked why his most recent book was so long: "It would have been shorter if I had had more time." Less is more in writing an essay, but less is more difficult than more.

Finally, we will establish a listserv and possibly a web page for the PTF. I would encourage general discussion on the listserv. I am always available for individual queries and discussions by e-mail, and so is the Graduate Consultant. I do not hold regular office hours, but I work in 446 Robertson with my door open, and you should feel free to stop by at any time I am in the office. I am in my office most weekends. I will also be happy to make individual appointments with you.

### Meeting Schedule and Reading:

21 September: Plenary Session

Course Materials: pp. 1-30, 59-60, 61-73

28 September: Plenary Session

Course Materials: pp. 74-91, 92-107, 119-262

5 October: Plenary Session

JP topics finalized by consent of instructor.

12 October: Guest Expert: Carol Risher (Association of American Publishers)

19 October: Plenary Session

26 October: Guest Expert: Prof. James Boyle (American University Law School)

Professor Boyle will be giving a public lecture at 4:30 p.m. which PTF members should attend, schedules permitting.

2 November: Fall Break

9 November: Guest Expert: Sandy Thacher (Director, Penn State University Press, AAUP, CCC)

16 November: Student oral presentations

Draft JPs due.

23 November: Student oral presentations

30 November: Guest Expert: Prof. Wendy Gordon (Boston University Law School)

Professor Gordon will be giving a public lecture at 4:30 p.m. which PTF members should attend, schedules permitting.

7 December: General discussion of PTF group report and recommendations

(led by Graduate consultant).

17 December: Final discussion of group report

(led by Graduate consultant).

3 December: Dean's Date: Final JPs due