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## INTELLECTUAL PROPERTY AND INFORMATION LAW

School of Information (SI 519) and Public Policy (PUBPOL 688)  
Fall Term 2008  
Fridays from 2-5PM

**Instructor:** Bryce Pilz, *Assistant General Counsel, University of Michigan*

### Reading List

#### I. The Protection of “Ideas and Expression” – Fundamental Principles of Free Speech and Intellectual Property

##### Week 1 – September 5

*These online materials will give you an overview of the U.S. legal system to assist you in understanding the manner in which we implement and enforce intellectual property and information laws.*

An Introduction (All): <http://usinfo.state.gov/products/pubs/legalotln/>

Chapter 1 (All): <http://usinfo.state.gov/products/pubs/legalotln/federal.htm>

Chapter 3 (All): <http://usinfo.state.gov/products/pubs/legalotln/policy.htm>

Chapter 6 (only the section “The Nature and Substance of Civil Law”):

<http://usinfo.state.gov/products/pubs/legalotln/civil.htm>

Chapter 8 (All): <http://usinfo.state.gov/products/pubs/legalotln/impact.htm>

*These short articles will guide you in briefing/reading/thinking about the judicial decisions you will read in this class.*

<http://volokh.com/files/howtoreadv2.pdf>

<http://www.lib.jjay.cuny.edu/research/brief.html>

*This very short case will allow you to apply what you read above. Try to brief this case as instructed above.*

Matthews v. Friedman 157 F3rd. 25 (First Cir. 1998).

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/1st/981408.html>

*This chapter should be a light read giving you an introduction into the subject matter of this course. We will delve into this material in more detail in future weeks.*

Lawrence Lessig, *Code 2.0*, Chapter on Intellectual Property, pp. 169-199

<http://pdf.codev2.cc/Lessig-Codev2.pdf>

(I’ve also provided a .pdf of this chapter on the CTools site.)

##### Week 2 – September 12

*Examine the 45 words of the First Amendment.*

The First Amendment

[http://www.usconstitution.net/xconst\\_Am1.html](http://www.usconstitution.net/xconst_Am1.html)

***This article provides a great overview of First Amendment law in the context of the Internet and universities.***

Constance S. Hawke, Computer and Internet Use on Campus, Chapter 2: Free Speech in Cyberspace, pp. 41-80. (CTools)

***This Supreme Court case is the latest in the line of challenges to laws passed by Congress attempting to protect minors from pornography on the Internet. (Read only Justice Kennedy's Opinion.)***

*Ashcroft v. ACLU*, 542 U.S. 656 (June 29, 2004)

<http://supct.law.cornell.edu/supct/search/display.html?terms=ashcroft%20american%20civil%20&url=/supct/html/03-218.ZS.html>

***The following is a fact sheet on the history and issues of Internet filters, with a focus on a case upholding a challenge to the Children's Internet Protection Act, which required federally-funded libraries to engage in filtering.***

Fact Sheet on Internet Filtering

<http://www.fepproject.org/factsheets/filtering.html>

***This is a short article summarizing the issues of attempts to use the legal process to discover the identity of anonymous Internet posters.***

The Process that "John Doe" is Due: Addressing the Legal Challenge to Internet Anonymity, David L. Sobel

<http://www.vjolt.net/vol5/symposium/v5i1a3-Sobel.html>

***This short case addresses whether software constitutes protectable expression, and when national security concerns trump freedom of expression principles.***

*Junger v. Daly* (6<sup>th</sup> Cir. 1999)

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=6th&no=00a0117p>

***Are bloggers "press" under the First Amendment?***

NCAA v. Bloggers Article

<http://www.nytimes.com/2007/06/14/sports/baseball/14blogs.html?ref=sports>

### **Week 3 – September 19: Copyright Law I**

***This article provides a good copyright background in the context of digital archives.***

June Besek, "Copyright Issues Relevant to the Creation of a Digital Archive," January 2003, Council on Library and Information Resources.

[www.clir.org/pubs/reports/pub112/pub112.pdf](http://www.clir.org/pubs/reports/pub112/pub112.pdf)

(also on CTools)

***The following is a good overview of the key provisions of U.S. Copyright Law.***

Jessica Litman, Digital Copyright, pp. 15-34 (CTools)

***This 9<sup>th</sup> Circuit case address the fair use defense for "thumbnailed" reproductions of***

**copyrighted materials.**

*Kelley v. Arriba Soft Corp.*, (9<sup>th</sup> Cir. 2003)

<http://caselaw.lp.findlaw.com/scripts/viewcase.pl?court=9th&party=arriba&subject=0&casenum=0>

**Examine This Attempt to Provide Fair Use Guidelines**

<http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm>

**This Supreme Court case addresses secondary liability for file-sharing technology. (Read only Justice Souter’s Opinion.)**

*Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 2005 U.S. LEXIS 5212 (June 27, 2005)

<http://www.law.cornell.edu/supct/pdf/04-480P.ZO>

## **Week 4 – September 26: Copyright Law II**

**Lawrence Lessig led a Harvard Legal Clinic in challenging the Sono Bono copyright extension act. Will Mickey Mouse ever enter the public domain?**

*Eldred v. Ashcroft* (2003)

<http://www.law.cornell.edu/supct/pdf/01-618P.ZO>

**Can a magazine release a digital compilation of its past magazine issues?**

*Greenberg v. National Geographic* (11<sup>th</sup> Cir. 2007)

<http://www.ca11.uscourts.gov/opinions/ops/200516964.pdf>

**Read this Article on the Digital Millennium Copyright Act**

<http://net.educause.edu/ir/library/html/cem/cem99/cem9913.html>

**Read the following information concerning “orphan works”?**

<http://www.publicknowledge.org/issues/ow>

**Analyze These Suggestions On Improving Copyright Law**

Lawrence Lessig, *Free Culture*, Section titled “Them, Soon,” pp. 287-306

<http://www.free-culture.cc/freeculture.pdf>

(A copy of this chapter is also provided on the CTools site.)

## **Week 5 – October 3: Patent Law I**

**The following will provide a background on the main principles of patent law:**

Read the following sections: (Requirements for protection under U.S. patent law, Applying for a utility patent, Examination of patent applications in the U.S. patent office, Rights granted by a U.S. patent)

<http://www.bitlaw.com/patent/index.html>

*Review this summary of the patent application process:*  
<http://www.warf.org/inventors/index.jsp?cid=15&scid=10>

*This article discusses the significance of the Supreme Court's 2007 decision in the KSR case, which many have called the most significant patent case in the last 20 years. KSR strengthens the "nonobviousness" hurdle to obtaining a patent – making it harder to get a patent, and easier to invalidate an issued patent.*  
[http://www.wsg.com/wsg/Display.aspx?SectionName=publications/PDFSearch/clientalert\\_ksr.htm](http://www.wsg.com/wsg/Display.aspx?SectionName=publications/PDFSearch/clientalert_ksr.htm)

*This is the first Federal Circuit case to apply the KSR decision. (It is shorter and easier to follow than KSR, in my opinion).*  
*Leapfrog Enterprises v. Fisher-Price*  
<http://www.cafc.uscourts.gov/opinions/06-1402.pdf>

**Take-home exercise (details given out Week 4)**

*The following chapter addresses some of the detriments of patents.*  
The Gridlock Economy, Sections on Patents, pp. 49-78, 99-102 (CTools)

## **Week 6 – October 10: Patent Reform / Intro to Trademark Law**

*Patent Reform Legislation has been a hot topic. These materials address some of the issues.*

Summary of Presentations on Patent Reform:  
[http://tlc.usm.maine.edu/cli/documents/patent\\_reform\\_jaffee\\_ftc\\_ibm.pdf](http://tlc.usm.maine.edu/cli/documents/patent_reform_jaffee_ftc_ibm.pdf)

Summary of Patent Reform Issues (read up to “Legislative Initiatives” on page 13:  
[http://www.lawandinnovation.org/cli/documents/crs\\_report\\_patent\\_reform.pdf](http://www.lawandinnovation.org/cli/documents/crs_report_patent_reform.pdf)

*Marshall, Texas is known for more than just high school football.... What are (or would be) some of the pro's and con's of have courts that specialize in patent law?*  
New York Times Article on Marshall, Texas:  
[http://www.nytimes.com/2006/09/24/business/24ward.html?\\_r=2&pagewanted=1&ref=technology&oref=slogin&oref=login](http://www.nytimes.com/2006/09/24/business/24ward.html?_r=2&pagewanted=1&ref=technology&oref=slogin&oref=login)

*Review this overview of some of the important principles of trademark law:*  
<http://cyber.law.harvard.edu/metaschool/fisher/domain/tm.htm>

*The following case addresses trademark infringement in metatags.*  
*Brookfield Communications v. West Coast Entertainment* (9<sup>th</sup> Cir. 1999)  
[http://www-personal.umich.edu/~omri/Brookfield\\_v\\_WestCoastEntertainment.pdf](http://www-personal.umich.edu/~omri/Brookfield_v_WestCoastEntertainment.pdf)

*This case addresses trademark issues in linking.*  
<http://www.internetlibrary.com/pdf/Boston-Duck-Tours-Super-Duck-Tours-D-Mass.pdf>

## II. Legal Issues Impacting Accessing and Disseminating Information

### **Week 7 – October 17: Software Patents / Trademarks (Cont.)**

*While some software and business method patents were being issued by the PTO prior to 1997, it was the State Street decision which triggered applicants flooding the PTO with software patents.*

*State Street Bank v. Signature Financial* (Fed. Cir. 1997)

<http://www.ll.georgetown.edu/Federal/judicial/fed/opinions/97opinions/97-1327.pdf>

*This blog post identifies some of the competing interests in the Bilski case.*

Blog post discussing BIO amicus brief concerning *Bilski* case:

[http://www.patentdocs.net/patent\\_docs/2008/04/bio-files-amicu.html](http://www.patentdocs.net/patent_docs/2008/04/bio-files-amicu.html)

*Information on domain names:*

<http://www.bitlaw.com/internet/domain.html>

*This article addresses issues with “cybergripping.”*

<http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1124960714485>

*American Airlines Suit Against Google – Complaint* (read through p. 35).

[http://www.out-law.com/PDF/Lawsuit\\_AA\\_v\\_Google.pdf](http://www.out-law.com/PDF/Lawsuit_AA_v_Google.pdf)

*NYTimes Article on American Airlines / Google Settlement:*

[http://www.nytimes.com/idg/IDG\\_852573C4006938800025748E006DED62.html?ref=technology](http://www.nytimes.com/idg/IDG_852573C4006938800025748E006DED62.html?ref=technology)

### **Week 8 – October 24: Open Dissemination and Access to Information**

*The following chapter gives an example of how non-proprietary dissemination of works can thrive:*

Lawrence Lessig, *Free Culture*, Chapter One: Creators, pp. 21-30

<http://www.free-culture.cc/freeculture.pdf> (also available on CTools)

*This chapter serves as a good introduction to the concept of open source software:*

Lawrence Rosen, *Open Source Licensing: Software Freedom and Intellectual Property Law*, Preamble, xix-xxii and Chapter 1: Freedom and Open Source, pp. 1-11, Chapter 3: Distribution of Software, pp. 41-49 (CTools)

*This blog briefly touches on some of the success of open source business models:*

Blog: Venture Capital Funding for Open Source Shows Significant Increase in First Quarter, Mark Radcliffe

<http://lawandlifesiliconvalley.blogspot.com/2008/05/venture-capital-funding-for-open->

[source.html](#)

***Here is the first case addressing the enforceability of open source licenses and confirming that open source is in fact based on intellectual property protection.***

Jacobson v. Katzer, Aug. 13, 2008

<http://www.cafc.uscourts.gov/opinions/08-1001.pdf>

***These articles analyze the concept of open access in the research context.***

Intro to Science Commons:

[http://sciencecommons.org/wp-content/uploads/ScienceCommons\\_Concept\\_Paper.pdf](http://sciencecommons.org/wp-content/uploads/ScienceCommons_Concept_Paper.pdf)

Article on NIH Open Access Policy:

[http://www.umuc.edu/cip/newsletter/2008\\_03/NIH\\_Mandate\\_GH\\_Spr08.pdf](http://www.umuc.edu/cip/newsletter/2008_03/NIH_Mandate_GH_Spr08.pdf)

***Creative Commons Primer:***

<http://www.locusmag.com/Features/2007/11/cory-doctorow-creative-commons.html>

### **Week 9 – October 31: Restrictions on Accessing and Disseminating Information on the Internet: False Information and Contracts**

***The following provides a general overview of defamation law principles:***

<http://www-cs-education.stanford.edu/classes/cs201/Projects/defamation-and-the-internet/sections/background/index.html>

***The following materials describe a defamation law suit brought against a blogger:***

<http://blogs.wsj.com/law/2008/03/13/revealed-patent-blogger-and-employer-sued-for-defamation/http://www.informationweek.com/news/management/legal/showArticle.jhtml?articleID=210003653>

<http://www.patentlyo.com/patent/2008/03/troll-tracker-d.html>

<http://www.patentlyo.com/albritton.cisco.pdf>

<http://www.patentlyo.com/patent/2008/08/albritton-v-p-1.html>

<http://blogs.wsj.com/law/2008/02/26/bounty-hunter-outs-author-of-patent-troll-tracker-blog/>

***Read this EFF summary of a case addressing service provider liability for defamatory comments:***

[http://w2.eff.org/legal/cases/Barrett\\_v\\_Rosenthal/](http://w2.eff.org/legal/cases/Barrett_v_Rosenthal/)

***These materials address the enforceability of the Terms of Service in Second Life:*** (read through p.6, and then from p.22 to the end).

*Bragg v. Linden Research, Inc.* (E.D. Pa. 2007)

<http://www.wired.com/gaming/virtualworlds/news/2006/05/70909>

<http://www.nylawyer.com/adgifs/decisions/101507robreno.pdf>

***The following materials address Internet issues concerning elections and politics:***

<http://eqs.nictusa.com/eqsdocs/000061C5.pdf>

<http://arstechnica.com/news.ars/post/20070807-internet-vote-swapping-legal-court-finds.html>

### **Week 10 – November 7: Disseminating University IP: University IP Policies, Technology Transfer, and Digital Archive Issues**

*Review the FAQs About University Tech Transfer to get a general overview of university technology transfer:*

[http://www.autm.net/aboutTT/aboutTT\\_faqs.cfm](http://www.autm.net/aboutTT/aboutTT_faqs.cfm)

*Review and familiarize yourself with the UM Policies on IP. We will use these in class to address some hypothetical and real-life situations.*

Bylaw 3.10: <http://www.regents.umich.edu/bylaws/bylaws03.html> - 10

Technology Transfer Policy: <http://www.techtransfer.umich.edu/resources/policies.php>

Copyright Policy: [http://www.copyright.umich.edu/policy\\_intro.html](http://www.copyright.umich.edu/policy_intro.html)

*Read the Book Review: Ivory Tower and Industrial Innovation: University-Industry Technology Transfer Before and After the Bayh-Dole Act.*

<http://www.hbs.edu/bhr/archives/bookreviews/79/mgraham.pdf>

*Read Chou v. University of Chicago, (Fed. Cir. 2001) to get a sense for disputes that can arise in the university setting:*

<http://www.ll.georgetown.edu/federal/judicial/fed/opinions/00opinions/00-1317.html>

*Principles for Emerging Systems of Scholarly Publishing:*

(on CTools).

*This paper analyzes the copyright issues in the Google Print Library Project:*

ALA policy paper on legal issues of Google Print Library Project (on CTools).

### **III. Regulation And Protection of Public Interests Through The Government And Technology**

#### **Week 11 – November 14: Privacy and Surveillance on the Internet**

*The following chapter will provide a good overview of privacy issues:*

Lawrence Lessig, Code 2.0, Chapter on Privacy, pp. 200-232

<http://pdf.codev2.cc/Lessig-Codev2.pdf>

(also available on CTools)

*This is a fun read that identifies the policy considerations surround privacy.*

Jerry Kang & Benedikt Buchner, Privacy in Atlantis, Harvard Journal of Law & Technology, Volum3 18, Number 1, Fall 2004 (CTools)

*This chapter provides a good background of the primary surveillance issues*



*concerning digital technology.*

N.D. Batra, Digital Freedom: How Much Can You Handle, Chapter 4: Surveillance in Cyberspace, pp. 77-122. (CTools)

*Review this blog identifying one of many recent data breaches and the University of Miami's response.*

Blog on University Miami Data Breach and Response:

<http://blogs.wsj.com/biztech/2008/04/25/how-to-respond-to-a-data-breach/?mod=WSJBlog>

## **Week 12 – November 21: Internet Regulation By Government and Technology**

*The following chapters serve as a background on Internet regulation through both government and the code itself:*

Lawrence Lessig, Code 2.0, Chapter 5: Regulating Code, pp. 61-82

Lawrence Lessig, Code 2.0, Chapter 7: What Things Regulate, pp. 120-137

<http://pdf.codev2.cc/Lessig-Codev2.pdf>

(also available on CTools)

*FCC Ruling against Comcast, released August 20, 2008 (read through p. 34).*

[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-08-183A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-183A1.doc).

*ACLU article on Net Neutrality:*

<http://www.aclu.org/freespeech/internet/26829res20060922.html>

*Review the following background on ICANN and a potential dispute over the .XXX domain name.*

<http://www.icmregistry.com/IRP/Background.pdf>

## **Week 13 – November 28: No Class; Happy Thanksgiving!**

*Enjoy your time off and have a great holiday weekend.*

## **Week 14 – December 5: Cybercrime and Wrap-Up**

*This case relating to “cyberstalking” occurred close to home:*

United States v. Abraham Jacob Alkhabaz (6<sup>th</sup> Cir. 1997)

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=6th&navby=docket&no=970036p>

*Listen to the NPR report “Cyber Sleuths Zero In as Web Fraud Takes Toll” linked here:*

<http://www.npr.org/templates/story/story.php?storyId=18117120>

*This gives an overview of the Department of Justice’s efforts to prosecute cybercrimes:*

CyberCrimes Report (Read up to p. 32).

[http://www.cybercrime.gov/2006IPTFProgressReport\(6-19-06\).pdf](http://www.cybercrime.gov/2006IPTFProgressReport(6-19-06).pdf)

***This article from a prominent legal scholar offers thoughts on crime in virtual worlds:***

Orin Kerr, Criminal Law in Virtual Worlds, Forthcoming in the University of Chicago Legal Forum

<http://papers.ssrn.com/abstract=1097392>

***Identifying which jurisdiction controls crimes on the Internet is a difficult issue:***

[http://www.thefreelibrary.com/Approaches+to+cybercrime+jurisdiction.\(Report\)-a0172599113](http://www.thefreelibrary.com/Approaches+to+cybercrime+jurisdiction.(Report)-a0172599113)