

SI 519 Intellectual Property and Information Law
School of Information
Fall Term 2018

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<http://www.lib.umich.edu/users/mslevine>
lib.umich.edu/copyright

Class on Tuesdays from 8:30 – 11:30 am
Room 1265 North Quad
Office Hours by appointment

Key Dates:

Sept 4 Classes begin
Sept 24 - Drop/add deadline
No class on October 16 - Fall study break
No class November 20 - Thanksgiving Recess
Dec 11 Last day of class

This syllabus will evolve through the term. I will adjust the readings and add supplementary materials in response to our class discussions. New assignments will appear and old ones may disappear. Most readings are online either freely or via your access to University of Michigan Library collections. As a convenience to you, I've included links to most items in Canvas. **Please be sure to regularly check the weekly assignments and readings in Canvas.**

Course Description

This course explores interrelated and sometimes competing legal and policy frameworks for the development and dissemination of ideas and expression in the Information Age. We will examine the ways in which principles of free speech and expression relate to intellectual property rights – and how these legal concepts are related to the advancement of knowledge and innovation. We will focus on these areas of law and their interrelation to the Internet and evolving technologies. We will consider the impact of other legal considerations and values on the development and dissemination of ideas and information (such as security, privacy, local control versus national and international considerations, competition, and the protection of minors). The course will draw upon the contexts of education, business, and government, with a special emphasis on the changing nature, roles and responsibilities of educational institutions.

Course Learning Objectives

In this course, we will examine, analyze, and discuss the law and policy foundations of intellectual property and information law. My overarching goal is for you develop a framework for your future as an informed citizen and information professional. We will consider essential concepts like freedom speech, copyright law, and more to explore essential notions of fairness in:

- The ways in which legal and policy frameworks shape the creation and dissemination of ideas and expression;

- How new and rapidly evolving technologies challenge past assumptions and affect current law and policy; and
- How law, values, and ethics affect the development and dissemination of ideas and information such as security, privacy, government regulation, international considerations, competition, and the protection of minors.

I want you to have a firm grasp of the **fundamental policy and legal frameworks**. With that in mind, we will also include **relevant current events into our classroom discussions** in light of the dynamic nature of current and ongoing public discourse. By the end of this course, you will be able to:

- Apply a conceptual framework for understanding and applying information property and intellectual property concepts accurately.
- Familiarity with the language and concepts used by lawyers to discuss these issues and problems so that you can participate in a convincing and professional manner in policy discussions.
- Basic understandings of how intellectual property regimes are similar and different.
- Experience examining the legislative process and how these legal regimes affect commerce, freedom of speech, inquiry.

Course Format

Your out-of-class reading include a diverse range of legal cases, articles, actual and proposed legislation, book chapters, and some videos. We will apply and augment these readings through class discussion, role-playing, student presentations, an occasional guest-speaker, analysis of current events, and some lecture. I will evaluate your performance based on written and oral assignments, as well as your class participation.

Attendance

The School of Information its accrediting agency requires that you attend class sessions in order to receive credit for this course. Your **in-class participation is essential** for this course, and you will miss the opportunity to learn from and teach your colleagues if you do not attend. *Should circumstances force you to miss a class, please inform me as early as possible prior to that class session.*

Evaluation

I will base your final grade on your active participation in class and the following assignments:

...continued on next page...

Assignment and Weight	Due Dates & How to Submit
Participation - 30%	Throughout course
'On Deck' - 10%	You will work in groups to lead a portion of at least one class.
<p>Short Papers (2) – 10% each These are in response to class discussion and readings; this may be a response to a hypothetical that I will provide to you.</p> <p>Each short paper is 750 words, single-spaced. References are not included in the word count. Submit papers in Canvas for grading.</p>	<p>Short Paper #1 – Due September 24 (10%) Topic Released in Class and Canvas on September 17</p> <p>Short Paper #2 – Due October 8 (10%) Topic Released in Class and Canvas on October 1</p>
<p>Abstract for Policy Paper - 5% You will submit one paragraph describing your paper topic.</p>	<p>October 15 – Submit your topic and abstract consisting of a notional title, thesis statement, and short paragraph about the topic.</p> <p>You will list your topic on the Canvas website to be shared with all students in the course.</p>
<p>Policy Paper - 20% You will explore a course-related topic of particular interest. This will be on a topic of your choice. It will be shared with the class for discussion in the final weeks of our class.</p> <p>Ideas may also be found in the LOOK readings in this syllabus, and you are free to suggest other topics.</p>	<p>1500 to 2000 words, about 5 pages, single-spaced. This excludes the title, any footnotes and references.</p> <p>Submit in Canvas to share with classmates and for grading.</p> <p>November 19 – Final Papers Due (Due early enough for everyone to read before last two classes - and to enjoy the Thanksgiving break.)</p>
<p>Presentation on Policy Paper - 10% Your Final Paper will be shared with your classmates and will be the basis for your in-class presentation. Your paper will be assigned as reading for the class.</p> <p>You will give a short talk and lead a discussion with your classmates and me. The purpose of the presentation is to give you the opportunity to share your interests and discoveries with your colleagues.</p>	<p>PowerPoint slides or notes may be submitted in Canvas to share with classmates. You may also use Google Slides and share the link.</p> <p>December 4 and 11 – In class</p> <p>Read: How to Give an Academic Talk by Paul Edwards (Updated October 2015)</p>
<p>Final Short Paper: Discussion of Classmates' Final Papers and Presentations - 5% You will write a short paper responding to your classmates' presentations and final papers to</p>	<p>750 words pages, about 2 pages, single-spaced. Submit in Canvas</p> <p>Due December 17</p>

synthesize key ideas and insights of the course. This is your' final exam.'	
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Papers

You will write several papers for this course. The papers will (1) give you an opportunity to demonstrate to what extent you understand and can communicate thoughtfully about the fundamental principles of this course; (2) provide the foundation for a discussion between you as a student and me as an instructor – as well as your classmates as colleagues; and (3) they enable you to think deeply and write critically about the aspects of intellectual property and information law that interest you.

- You must submit each paper and it must be of satisfactory quality.
- Please submit your papers on the due date established.
- I will not grade late papers unless you make arrangements with me beforehand - or you have a dire emergency.
- These due dates allow me to grade and comment on your work in a timely manner and ensure fairness for your classmates.
- Your writings should include citations to applicable class readings as well as to outside research materials.
- Strong papers will offer reasoned arguments and positions on issues – rather than mere descriptions of what others have written – supported by research, evidence, and innovative thinking.
- You should pay careful attention to your writing style so that you convey your thoughts as clearly and effectively as possible.

Paper Format

I read each of your written assignments carefully and try to grade your work within 72 hours.

Please comply with the format requirements to help me read your work quickly and efficiently. DO NOT get creative with the format unless asked to do so - it makes it harder for me to read your work.

Written assignments will follow the following format:

- Single-spaced with breaks between paragraphs
- 1” margins
- Times Roman 12 point font
- Your name and assignment title in header (“Susie Student, Short Paper 1”)
- Chicago Manual of Style citations <http://www.chicagomanualofstyle.org>

I encourage you to use a citation tool like Zotero. Citation management tools will make your academic lives infinitely easier and more productive. **Contact Shevon Desai in the U-M Library to learn how to use these tools or for any questions about help and ideas from your library.**

Presentations

You will give one brief, formal presentation related to one of the class topics we cover this term using your Policy Paper. I will work with each of you to select a subject appropriate for you and the class. You will email to me a short 4-5-sentence abstract that we'll discuss. Once approved, you will list it in Canvas with your classmate's topics.

Class Participation

You will also give informal presentations or lead discussions throughout the course as part of your class participation, typically on the assigned reading material.

By taking this class, we are entering a kind of partnership. I will zealously prepare for and plan each class. I have spent several months selecting readings for each class that will allow us to hopefully build a vibrant class discussion, applying what we learn in those readings. **Our class time is a combination of lecture and guided discussion.**

I will carefully schedule a series of activities for each class that will ideally allow us to enjoy our exploration of intellectual property and information law. In exchange, I expect your diligent and enthusiastic participation in the class discussions. I also expect that you have read and understood the readings. You will have the opportunity to participate both in class and through Canvas. **While I encourage you to challenge notions that you read about or hear about during this class, you will treat the members of this class cordially and with the utmost respect.**

I expect you to be fully prepared for each class. **You are expected to actively engage in all class discussion. You are expected lead part of the class conversation from time to time.** Be prepared to discuss the facts, issues, and holdings of assigned cases, lead conversation about their implications, relate them to other aspects of the course to-date and general news of the day as it relates to our course.

Please contact me as soon as you know you may be absent in case of illness or emergency.

Meetings Outside Class

Plan to meet with me at least once during the semester to discuss paper or presentation topics or other issues of interest (*e.g.*, career options).

I am available during the regular business day by appointment at my office in the Shapiro Library, Room 4019. To schedule an appointment with me, email me at mslevine@umich.edu or call 734-615-3194. I frequently check my email; email is the best way to contact me.

Canvas

Please use the Canvas discussion tools to forward articles or announcements that relate to the subject matter of our class. I will use the Canvas announcement tool to communicate important information to the whole class.

Academic Integrity / Original Work

Unless otherwise specified in an assignment as a group project, all submitted work must be your own, original work. Any excerpts, statements, or phrases from the work of others must be clearly identified as a quotation, and a proper citation provided. Any violation of the School's policy on Academic and Professional Integrity (stated in Master's and Doctoral Student Handbooks) will result in serious penalties, which might range from failing an assignment, to failing a course, to being expelled from the program. Violations of academic and professional integrity will be reported to the UMSI Student Affairs. Consequences impacting assignment or course grades are determined by the faculty instructor; additional sanctions may be imposed by the assistant dean for academic and student affairs.

Copyright Integrity

Your work as a student at the University of Michigan will often involve considerations related to copyright and academic integrity. The library's guide to [Copyright Basics](#) provides information about your rights and obligations under copyright law. You can also contact the Library Copyright Office at copyright@umich.edu or visit their [website](#) to sign up for an online or in-person appointment. For resources on the related issues of plagiarism and academic integrity, please visit the [Academic Integrity](#) site maintained by the library and the Center for Research on Learning and Teaching.

Collaboration

I emphasize collaboration in this course as part of an active approach to learning. Collaboration with other students in the course is especially valuable in summarizing the reading materials and picking out key concepts. You must, however, write your papers on your own, in your own words, before turning them in. You may work in groups on some projects: if you worked with someone on an assignment, you must list any and all collaborators on your written submission. Collaboration is almost always forbidden for take-home and in-class exams.

Original Work - No Plagiarism

All written submissions must be your own, original work. Original work for narrative questions is not mere paraphrasing of someone else's complete answer: you must not share written answers with each other at all. At most, you should be working from notes you took while participating in a study session. Largely duplicative copies of the same assignment will receive an equal division of the total point score from the one piece of work.

You may incorporate selected excerpts, statements or phrases from publications by other authors, but they must be clearly marked as quotations and must be attributed. If you build on the ideas of prior authors, you must cite their work. You may obtain copy editing assistance, and you may discuss your ideas with others, but all substantive writing and ideas must be your own, or be explicitly attributed to another. See the (Doctoral, MSI, MHI, or BSI) student handbooks available on the UMSI intranet for the definition of plagiarism, resources to help you avoid it, and the consequences for intentional or unintentional plagiarism.

Accommodations for Students with Disabilities

If you think you need an accommodation for a disability, please let me know at your earliest convenience. Some aspects of this course, the assignments, the in-class activities, and the way the course is usually taught may be modified to facilitate your participation and progress. As soon as you make me aware of your needs, we can work with the Office of Services for Students

with Disabilities (SSD) to help us determine appropriate accommodations. SSD (734-763-3000; <http://ssd.umich.edu>) typically recommends accommodations through a Verified Individualized Services and Accommodations (VISA) form. I will treat any information that you provide in as confidential a manner as possible.

Please do not hesitate to raise questions about approaches to learning and learning styles with me. I am fully committed to ensuring the best possible experience for each of you.

Student Mental Health and Well Being

The University of Michigan is committed to advancing the mental health and wellbeing of its students. If you or someone you know is feeling overwhelmed, depressed, and/or in need of support, services are available. For help, contact Counseling and Psychological Services (CAPS) at (734) 764-8312 and <https://caps.umich.edu/> during and after hours, on weekends and holidays, or through its counselors physically located in schools on both North and Central Campus. You may also consult University Health Service (UHS) at (734) 764-8320 and <https://www.uhs.umich.edu/mentalhealthsvcs>, or for alcohol or drug concerns, see www.uhs.umich.edu/aodresources. For a listing of other mental health resources available on and off campus, visit: <http://umich.edu/~mhealth/>.

Resources

I work in the University of Michigan Library. Take advantage of the expertise and collections provided by the Library. If you have general questions or want direction on citation tools, there is help. Shevon Desai is at the Library and typically has office hours at North Quad for part of the semester.

Shevon Desai, Communication and Information Studies Librarian
<http://www.lib.umich.edu/users/shevonad>

Feedback

Besides the formal feedback required by the SI at the end of the term, I also seek feedback from you at some point during the middle of the term. I encourage any constructive suggestions for the course at *any* time during the term.

Syllabus

This syllabus is a guide. **Virtually any aspect of the syllabus could change and probably will in response, for example, to current events or particular interest of the class.** I'll give you as much notice as possible if we're going to change something. We will spend the first part of every class discussing relevant current events. I encourage you to bring up areas of interest and current events.

Guest Speakers

Guest speakers are scheduled according to their availability and their topics may not coincide with the topic for the given week.

Information for Students Regarding Religious Holidays and Academic Conflicts

http://www.provost.umich.edu/calendar/religious_holidays.html

Please let me know in advance of the dates of religious holidays on which you will be absent. I will do my best to work around such necessary absences. Although the University of Michigan, as an institution, does not observe religious holidays, it has long been the University's policy that every reasonable effort should be made to help students avoid negative academic consequences when their religious obligations conflict with academic requirements. Absence from classes or examinations for religious reasons does not relieve students from responsibility for any part of the course work required during the period of absence.

Students who expect to miss classes, examinations, or other assignments as a consequence of their religious observance shall be provided with a reasonable alternative opportunity to complete such academic responsibilities. Such notice must be given by the drop/add deadline of the given term. Students who are absent on days of examinations or class assignments shall be offered an opportunity to make up the work, without penalty, unless it can be demonstrated that a make-up opportunity would interfere unreasonably with the delivery of the course. Should disagreement arise over any aspect of this policy, the parties involved should contact the Department Chair, the Dean of the School, or the Ombudsperson. The provost will resolve final appeals.

Topical Overview and Readings

- NOTE: If you find a link that is not working, email me *and* communicate the correct link to the entire class via Canvas.
- READ means something is assigned and required.
- LOOK means something is of interest but optional.

Part 1: The Protection of Ideas and Expression – Fundamental Principles of Free Speech and Intellectual Property

Week 1 – September 4: Introduction and Foundations - First day of class

Week 2 – September 11: The First Amendment, Speech & Expression, Defamation

Week 3 – September 18: Privacy and Surveillance on the Internet

Week 4 – September 25: Copyright Law

17 USC 108 in Action – ILL, Document Delivery, Licenses, and Contracts

Week 5 – October 2: Copyright Law (continued)

Orphan Works

Copyright Global Context

Week 6 – October 9: Trademark, Trade Secret

Part 2: Access and Dissemination of Information

No class on October 16 - Fall Study Break

Week 7 – October 23: Open Dissemination and Access to Information

Week 8 – October 30: Restrictions on Access to and Dissemination of Information on the Internet

[Invited speaker, Diane Peters, General Counsel, Creative Commons](#)

[Invited speaker, Ella Atkins, Professor, Aerospace Engineering, University of Michigan
Contracts, Licenses, Terms of Service](#)

[IA, AR, VR](#)

[Week 9 – November 6: Patent & Disseminating University IP - University IP Policies,
Technology Transfer / Digital Archives](#)

[Patent](#)

[University IP](#)

[Part 3: Regulation And Protection of Public Interests Through The Government And Technology](#)

[Week 10 – November 13 - Internet Regulation By Government and Technology](#)

[Invited speaker, Mike Waring, Executive Director of Federal Relations, University of
Michigan](#)

[Week 11 - November 27: Cybercrime and Internet Governance](#)

[Guest speaker, Travis Copenhaver, Associate Attorney, Cannabis Legal Group](#)

[Guardians of the internet: The 14 people who control the security of the world wide web –
and literally hold the KEYS to the internet \(Read article and watch short video embedded in
article\)](#)

[November 23 – Thanksgiving Holiday – No Class](#)

[Week 12 – December 4: Presentations and discussion](#)

[Week 13 - December 11: Presentations and discussion - Last day of class](#)

Part 1: The Protection of Ideas and Expression – Fundamental Principles of Free Speech and Intellectual Property

An overview of foundational laws and policies that determine how ideas and expression are developed and disseminated in our society, with a focus on cyberspace.

- Introduction and overview of the course; review of course requirements
- Introduction to U.S. Law – the court system; U.S. Constitution; legislation
- Introduction to the subject matter of the course – why intellectual property and information law are so important.

Week 1 – September 4: Introduction and Foundations - First day
of class

These 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.

READ

Before our first class on September 4, go to your favorite spot on campus and read the Syllabus. Note any thoughts you have for areas you'd like us to explore in the class that may not be in the Syllabus.

Read the assignments for Week 1 and [How to Give an Academic Talk](#) by Paul Edwards

These short articles provide guidance on how to approach the judicial decisions you will read in this class. Skim these:

[How to Read a Case](#)

[How to Brief a Case](#)

This chapter is a light read to provide you with an introduction to this course. We will delve into this material in more detail in future weeks.

Lawrence Lessig, [Code 2.0, Chapter Code is Law](#), pp. 1-8

[The Constitution and The Bill of Rights](#) (Legal Information Institute)

Read the Constitutions and Bill of Rights

LOOK

[ALA Code of Ethics](#) (professional values – preservation, access to information)

[IFLA Code of Ethics](#)

Week 2 – September 11: The First Amendment, Speech & Expression, Defamation

- Origins and purpose of the First Amendment: underlying assumptions of freedom of expression.
- When and how do ideas become translated into “protected free speech”?
- To what extent does protection for speech depend on its context or content?
- Should the rules in **cyberspace** differ from those for other media?
- What interests (both private and public) merit legal restrictions on the otherwise free dissemination of ideas and expression?
- Are there particular persons that should have more or less protection from defamation? [minors, govt officials and public figures]
- How does the Internet change the way we think about defamation? [some items from speech to privacy - Internet of Garbage - game behavior]

READ

Carefully read the First Amendment. Why is something so short so complex? What IS speech?

This Supreme Court case one in a line of challenges to laws passed by Congress attempting to protect minors from pornography on the Internet (Read Syllabus and Justice Kennedy's Opinion):

[Ashcroft v. ACLU, 542 U.S. 656 \(June 29, 2004\)](#)

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. How has this evolved?

[Internet Use in Libraries, ALA Library Fact Sheet Number 26](#) (2003) (filtering, CIPA)

[Libraries, the Internet, and Filtering](#) (2003)

[Anna Vamialis, Online Defamation: Confronting Anonymity](#), 21 Int'l J.L. & Info. Tech. 31 (2013) (find in HeinOnline from UM Library website - need to be logged in)

The following provides a general overview of defamation law principles – note the interesting ways defamation varies from country to country and culture to culture. How can we address these variations in a globally connected online world?

[Defamation](#) (Wikipedia)

[Before you write that scathing online review, beware of defamation](#), The Conversation, March 19, 2018

Who is responsible? Read this EFF summary of a 2006 case addressing service provider liability for defamatory comments, [Barrett v. Rosenthal](#).

LOOK

[1731 item responding to libel](#) (HathiTrust)

Software as speech:

[Junger v. Daly \(6th Cir. 1999\)](#)

[Bernstein v. US Department of Justice, 176 F.3d 1132 \(1999\)](#)

[Software Speech, Essay](#)

[Apple, the FBI, and Free Speech](#)

[False Information, Misappropriation]

Week 3 – September 18: Privacy and Surveillance on the Internet

- What principles dictate when and why it is appropriate to regulate access to information?

- How does privacy apply in the online environment and is that different than at home or at work?
- Does technology blur traditional boundaries concerning our expectation of privacy? [Carpenter, no privacy in garbage]
- What are the rights and responsibilities of individuals, network providers, etc concerning security? [gdpr, snowden good or bad, service provider liability]
- What are the tensions inherent in the rights of privacy and speech? (intrusion?)

The following chapter provides a good overview of privacy issues:
Lawrence Lessig, [Code 2.0, Chapter on Privacy](#), pp. 200-232

US PATRIOT Act

“Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” [Text from the GPO](#)
[America's Most Dangerous Librarians](#)
[The USA PATRIOT Act, ALA](#)

Discuss: European Union - ‘The Right to Be Forgotten’
[Factsheet on the “Right to be Forgotten” ruling \(C-131/12\)](#)
[ECJ to rule on whether 'right to be forgotten' can stretch beyond EU](#), July 20, 2018.

Who is in control? How should it vary?
[Bringing new Redirect Method features to YouTube](#), July 20, 2018

Introduction to Privacy (International Association of Privacy Professionals (IAPP)
General Data Protection Regulation and California's Consumer Privacy Act

Discuss in class: [Snoopza app](#)

LOOK

[Carpenter v. US](#) decided June 2018

[1694 writing on privacy](#) (HathiTrust)

Take a look at some of the policies that apply here at the University of Michigan to the subjects we’ll discuss in this course. *Peruse* these to be generally aware of them. Are there other University policies you’ve wondered about?

[SPG 201.17 Employment Oath](#)

[SPG 601.01 Freedom of Speech and Artistic Expression](#)

[601.08-1 Identification, Maintenance, and Preservation of Digital Records Created by University of Michigan](#)

[SPG 601.12 Institutional Data Resource Management Policy](#)

[SPG 601.20 Music Performance License Fees](#)

[SPG 302.06 Michigan Historical Collections – Acquisitions](#)

Week 4 – September 25: Copyright Law

- Origins and purpose of intellectual property and law
- The bundle of rights involved in copyright
- What is the difference between ideas and tangible expression? Do these terms have distinct meaning in the digital age?
- In what ways has the Internet changed the norms and assumptions underlying intellectual property protection?
- How do the purposes of intellectual property and free expression relate to each other?
- What is the relationship between limits on intellectual property protection (e.g., fair use doctrine or patentable subject matter restrictions) to the First Amendment?

Read “Copyright Basics” circular from [this list of resources from the US Copyright Office](#). Note the other topics covered and explore the site.

Read this overview of the key provisions of [U.S. Copyright Law](#).
[Jessica Litman, Digital Copyright, pp. 15-34](#) (full book is in Deep Blue, free)

This 9th Circuit case addresses fair use regarding “thumb nail” reproductions of copyrighted materials.

[Kelley v. Arriba Soft Corp., \(9th Cir. 2003\)](#)

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 \(June 27, 2005\)](#)

17 USC 108 in Action – ILL, Document Delivery, Licenses, and Contracts

Review and discuss in class:

Review the language of 17 USC 108 and the Section 108 Study Group report.

Review CONTU. What is the Copyright Clearance Center?

Review sample contracts for major library licences.

LOOK

Consider with failure of SOPA and PIPA:

The Iron Law of Consensus: Congressional Responses to Proposed Copyright Reforms since the 1909 Act, 36 J. Copyright Soc’y U.S.A., 109 (1989) (to be provided)

[ARL Code of Best Practices for Fair Use in Academic Libraries](#)

Nina Paley video, [All Creative Work is Derivative](#) (on YouTube)

Week 5 – October 2: Copyright Law (continued)

- Does the Internet alter the rationale for copyright protection? Would you still create if you were not given the full bundle of copyrights in your creation?
- Could you find someone to publish/distribute your work if they were not granted that full bundle of rights?
- How does the DMCA impact Universities?
- What types of reform are needed to best protect free expression and/or innovation? Who is best situated to implement that reform?

Lawrence Lessig led a Harvard Legal Clinic challenge to the Sonny Bono Copyright Extension Act. Will Mickey Mouse ever enter the public domain? Read this article about his experience in the *Eldred v. Ashcroft* case (2003) challenging term extension:

[How I Lost the Big One, Lawrence Lessig, legalaffairs, March/April 2004.](#)

[Golan v. Holder \(2012\)](#) (69 pages - I encourage you to read the whole case. You may instead read the Wikipedia entry. DO READ Justice Breyer's dissent which mentions the University of Michigan specifically.)

[Happy Birthday is in the public domain](#) (Wikipedia)

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

[Greenberg v. National Geographic \(11th Cir. 2007\)](#)

compare with

[New York Times v. Tasini - From the National Writers Union](#)

and

[New York Times v. Tasini - From Wikipedia](#)

Lide, Casey, '[What Colleges and Universities Need to Know about the Digital Millennium Copyright Act](#)', CAUSE/EFFECT, Vol. 22, Number 1, 1999. (Explains basic information.)
What is 17 USC 1201?

Orphan Works

Discussion: HathiTrust and CRMS - the public domain.

Look over HathiTrust website www.hathitrust.org

On your own: Try downloading a book and starting a collection.

[Authors Guild v. HathiTrust - From Wikipedia](#)

Then read the district court opinion - and then the opinion on appeal. How are they similar or different?

[District Court](#)
[US Court of Appeals](#)

[From Publishers Weekly](#)

Discuss:

“The Next Great Copyright Act” and where it stands today.

Analyze These Suggestions On Improving Copyright Law

[Lawrence Lessig, Free Culture, Section titled “Them, Soon,” pp. 287-306](#)

LOOK (None this week.)

Copyright Global Context

- What are the key international conventions or treaties that address copyright?
- How do they function in practice? How do different cultural assumptions lead to different results or challenges in a global context?
- How does copyright relate to freedom of speech, inquiry, and expression as a practical matter?
- What are the current discussions at the US and international level (WIPO) regarding copyright and access to people with print disabilities? Notions of intellectual property and ‘traditional knowledge’?

READ

Read this. We’ll go over it in class.

[Module 2: The International Framework, Berkman](#)

WIPO

Overview:

[Historic Treaty Adopted, Boosts Access to Books for Visually Impaired Persons Worldwide](#)

Take a look at the actual document - you’ll find the pdf in several languages here:

[Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled](#)

Europe’s New Renaissance: New Policies and Rules for Digital Preservation and Access to European Cultural Heritage, Argyri Panezi, Columbia Journal of European Law, May 2018

[WIPO and Traditional Knowledge](#)

This page links to information about several of WIPOs areas that touch on traditional culture and expression from genetic matter to culture expressed and conveyed generation to generation. Spend time on this site; get familiar with the interests, issues, and opportunities. What are some areas of conflict or controversy?

[Local Contexts](#)

LOOK

[Kenny Crews, WIPO Copyright Exceptions](#)

Skim this document for general familiarity.

[Gore, Emily, 'Promoting Interoperability: Working on Rights', DPLA blog, March 1, 2015](#)

[European Commission's Report on Digitisation, Online Accessibility and Digital Preservation of Cultural Material, September 24, 2015](#)

Accessibility

Discuss: Why we are discussing accessibility in a copyright class? 17 USC 121.

[Tactile Art \(video\)](#)

[Adaptive Technology at Michigan](#)

Lessons from Open Source Bach: Robert Douglass and Kimiko Ishizaka -
opengoldbergvariations.org

[Braille Edition of Open Goldberg Variations](#)

[Describing Visual Resources Toolkit](#)

Week 6 – October 9: Trademark, Trade Secret

- In what ways does the rationale for trademark protection differ from copyright and patent protection?
- How has the Internet affected the duty to police one's trademark rights? It is easier to police, but is there a concern of overly aggressive policing?
- What types of "use" of a mark should we be most concerned about?
- Who should control the distribution of domain name rights?
- Does trademark ever conflict with freedom of speech notions? How?

READ (Trademark)

Review this [overview of some of the important principles of trademark law](#).

This case addresses trademark infringement in metatags: [Brookfield Communications v. West Coast Entertainment \(9th Cir. 1999\) - From Wikipedia](#)

This case addresses early trademark issues in linking: [Boston Duck Tours v. Super Duck Tours, 2007](#)

Discuss: How do domain names intersect with trademark? Do they? How do they intersect with speech? Do they?

Look at the [ICANN](#) site generally and the [Domain Registration Process](#).

LOOK

[Video of 'Barbie Girl' by Aqua](#)

Mills, Juline E.; Tyrrell, Brian J.; Werner, William B.; and Woods, Robert H. (2009) ["Cybergripping: Violating the Law while EComplaining."](#) Hospitality Review: Vol. 26: Iss. 1, Article 6.

[American Airlines Suit Against Google](#) – Complaint (read through p. 35).

[NYTimes Article on American Airlines / Google Settlement](#)

READ (Trade Secret)

Review this WIPO site (go through each section)

[What is a Trade Secret?](#)

Frommer, Jeanne, "Trade Secrecy in Willy Wonka's Chocolate Factory" in The law and theory of trade secrecy: a handbook of contemporary research, Rochelle C. Dreyfuss, Katherine J. Strandburg, 2011. (to be provided)

[Five Things to Know About the Defend Trade Secrets Act, Peter J. Toren, IPWatchdog, May 11, 2016.](#)

[Uniform Trade Secrets Act - From Wikipedia](#)

[Defend Trade Secrets Act - From Wikipedia](#) (May 2016)

Look over the structure and language of the actual statute: [18 USC 1836](#)

Part 2: Access and Dissemination of Information

A look at various legal issues that affect how rights holders disseminate information and how and whether the public accesses information.

No class on October 16 - Fall Study Break

Week 7 – October 23: Open Dissemination and Access to Information

- What are the rights of the general public regarding access to and use of ideas and expression?
- What is the concept of the public domain (including government documents, idea of open-source movement)?
- How can open source be an effective business model?
- In what ways, if any, does the Internet make open source licenses more practical?
- What is open access? What is open source? How are they similar and distinct?
- How does Creative Commons work? Which of the concerns about the current state of copyright law does the Creative Commons project address?

READ

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

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.
Read:

Preamble, xix-xxii

Chapter 1: Freedom and Open Source, pp. 1-11

Chapter 3: Distribution of Software, pp. 41-49

[Free version](#) May also be found in Mirlyn - the Library has a license for 7 concurrent users in Safari.

(Depending on class' interests. TBD.) William W. Fisher III, Felix Oberholtzer-Gee, "[Strategic Management of Intellectual Property: An Integrated Approach](#)," California Management Review, Vol. 55, No. 4, Summer 2013. (Provides strategic framework for business planning to optimize intellectual property assets.)

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. [Jacobsen v. Katzer, Aug. 13, 2008](#)

Skim University of Michigan Library [LibGuide on Creative Commons](#)

Skim [Creative Commons Primer](#) – get a sense of how the licenses work

NIH Open Access Policy and OSTP Policy – Open Access and Open Data

Paul Basken, NIH to Begin Enforcing Open Access Policy on Research It Supports, The Chronicle of Higher Education, November 19, 2012.

<http://www.chronicle.com/article/NIH-to-Begin-Enforcing/135852/>

Peruse this website. [SPARC – Scholarly Publishing and Academic Resources Coalition](#)

LOOK

There are some nuances in Creative Commons licenses. What is noncommercial?

Mike Masnick, [Creative Commons wants to step into lawsuit Over Definition of 'Noncommercial' in a CC License](#), TechDirt, September 2, 2016

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

[Intro to Science Commons](#)

[The Internet's Own Boy: The Story of Aaron Swartz](#)

Of interest. This is about an hour and forty-five minutes – it is worth watching for discussion but is not required. Look at [MIT's Swartz Report: Community Engagement](#).

[Generation Gap in Authors' Open Access Views and Experience, Reveals Wiley Survey](#)

Week 8 – October 30: Restrictions on Access to and Dissemination of Information on the Internet

Invited speaker, Diane Peters, General Counsel, Creative Commons

****NOTE: CLASS WILL BE HELD IN CLARK LIBRARY SPACE IN SHAPIRO LIBRARY****

Invited speaker, [Ella Atkins, Professor, Aerospace Engineering, University of Michigan](#)

- Should it concern us if private parties can achieve through contract what they could not otherwise achieve under the law? (e.g., protect databases, restrict otherwise fair uses?)

Read this article from August 7, 2007. How does this strike you today? What are the current issues concerning elections and politics as they relate to the integrity of information?

[Internet vote-swapping legal, court finds: Swing state voter with third-party leanings but don't want to endanger more.](#)

Contracts, Licenses, Terms of Service

Discuss copyright basics and review some contracts and licenses. Implications of library licenses, terms of service.

IA, AR, VR

Tentative reading:

Discussion - New issues: Artificial Intelligence, Augmented Reality and Virtual Reality
How does the current legal framework work with AI, AR, and VR? Does it? What are the issues - legal and ethical?

Read [Law, Virtual Reality, and Augmented Reality](#) by Mark Lemley and Eugene Volokh

Read selected readings on drones.

Week 9 – November 6: Patent & Disseminating University IP - University IP Policies, Technology Transfer / Digital Archives

Patent

- In what ways does strong patent protection help innovation? Hurt innovation?
- What are the rationales for granting a patent monopoly? Are those rationales different for different types of technologies? Does the Internet or globalization alter those rationales?
- With respect to patent monopolies, should the courts or Congress better protect the public interest?
- Do patents make sense for inventions embodied in software? What factors would affect the decision to pursue patent protection?
- Who is best situated to provide meaningful patent reform: the courts or Congress?
- Should the public have a greater voice in patent reform issues?

READ

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

[General Information Concerning Patents](#)

and

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

The [US patent process](#)

Wikipedia entries for:

State Street Bank and Trust Company v. Signature Financial Group

Bilski v. Kappos (discussing State Street and Bilski, patentability of business processes – recall

Baker v. Selden from copyright lecture)

Then read [Bilski v. Kappos \(2010\)](#)

For class discussion:

[‘Human Genes Cannot Be Patented’](#)

[‘What’s the gene that led to Angelina Jolie’s double mastectomy?’](#)

[Association for Molecular Pathology v. Myriad Genetics \(2013\)](#)

LOOK

View [Bryce Pilz’s videos on patent.](#)

[The Gridlock Economy: How Too Much Ownership Wrecks Markets, Stops Innovation, and Costs Lives](#), Michael Heller. (Available from UM Library, search in Mirlyn for the electronic version)

Also see related material from Heller at [Berkman Center for Internet & Society website information](#).

Patent Licensing - [A Detriment or Key to Innovation? - Podcast](#)

Intellectual Property Practice Group Podcast Co-sponsored by the George Mason University Law School Center for the Protection of Intellectual Property, February 25, 2013 (51 minutes)

Ogilvie, Meghan, [‘Secrecy Slowing Drug Research’](#), thestar.com, April 4, 2009

KSR International Co. v. Teleflex, Inc. (2007) and Nonobviousness

[‘It’s Obvious: Supreme Court Rejects Rigid Application of “Teaching-Suggestion-Motivation” Test in Patent Cases’](#)

This article discusses significance of the Supreme Court’s 2007 KSR decision which strengthens the “nonobviousness” hurdle to obtaining a patent – making it harder to get a patent and easier to invalidate an issued patent.

[Leapfrog Enterprises v. Fisher-Price](#) – See this overview and link to the case.

This is the first Federal Circuit case to apply the KSR decision. (It is shorter and easier to follow than KSR, in my opinion).

University IP

- Should Universities be held to a different standard in terms of their ownership or control of intellectual property? What interests should we consider in regulating how Universities disseminate their intellectual property?
- Under the UM policies, if a faculty member authors new software that creates a database system that makes it significantly easier to collect, manage, and analyze genetic data, who owns the rights in that software?

- What is at stake?

READ

UM Policies on IP

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

[Bylaw 3.10](#)

[Technology Transfer Policy](#)

[Copyright Policy, SPG 601.28](#)

Schacht, Wendy, [The Bayh-Dole Act: Selected Issues in Patent Policy and the Commercialization of Technology](#), Congressional Research Service, Congressional Research Service, December 3, 2012

Read [Chou v. University of Chicago, \(Fed. Cir. 2001\)](#). What kinds of disputes might arise in the university setting?

LOOK

Data - we'll emphasize or deemphasize this depending on group's interests. Note the Library's Research Data Services and Deep Blue Data

[Do you have an institutional Data Policy: A Review of the Current Landscape of Library Data Services and Institutional Data Policies, 2015](#)

[China asserts firm grip on research data, AAAS, April 9, 2018](#) (short)

[Notice of the General Office of the State Council on the Measures for Managing the Printing and Distributing of Scientific Data, General Office of the State Council \(2018\) No. 17](#)

For perspective:

[Principles for Emerging Systems of Scholarly Publishing](#), 2000 [Scholarly publishing in the university, discuss shift to publisher in the library. How are things evolving?]

Part 3: Regulation And Protection of Public Interests Through The Government And Technology

A look at how other legal doctrines, government policy, design, or philosophy regulate technology, especially the Internet.

Week 10 – November 13 - Internet Regulation By Government and Technology

Invited speaker, [Mike Waring, Executive Director of Federal Relations, University of Michigan](#)

- What constitutional principles limit the federal government's ability to regulate the Internet?
- What are the implications of technology issued by private companies regulating the Internet? Should the government care?
- How does copyright enforcement function?
- What is 'net neutrality' and why does it matter?

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 and Chapter 7: What Things Regulate, pp. 120-137

What is 'net neutrality'? Why does it matter? What are the implications of its recent end?

[ACLU article on Net Neutrality](#)

Compare discussions of net neutrality from the following sources: Federal Communications Commission, Electronic Frontier Foundation, American Library Association, and Comcast

[Eric Goldman blogpost, 2012](#) looking back.

Other perspectives

[Report assesses UK's ISP-level blocks of piracy sites as effective, but glosses over risks](#), August 22, 2016 (Who is paying for what research?)

Hiltzik, Michael, ['Net neutrality is dead. Bow to Comcast and Verizon, your overlords.'](#) LA Times, January 14, 2014

Optional: here are a couple of articles about the June 2016 DC Circuit decision regarding net neutrality:

[Court upholds Obama-backed net neutrality rules](#)
[Net neutrality FCC appeals court ruling](#)

LOOK

Watch *Before the Music Dies* (2007) (may watch and discuss in class)
DVD in Askwith Media Library, 2nd Floor, Shapiro Library
How regulation in one area (FCC regulation of radio stations) affects other areas of commerce and creativity (music)

Week 11 - November 27: Cybercrime and Internet Governance

Guest speaker, Travis Copenhaver, Associate Attorney, Cannabis Legal Group

- What interests should the government consider in deciding to criminalize certain activity on the Internet?
- What kinds of crimes that occur online should be federal versus state crimes? The Commerce Clause of the US Constitution generally allows Congress to regulate activities that impact interstate commerce.
- Does the Internet render meaningless the interstate commerce limitation on Congress's power?
- How does the form and execution of governance shape privacy, speech, investment and other areas we've discussed in this course?
- In what ways does the government's heavy involvement in pursuing and prosecuting crimes committed via the internet impact our other constitutional freedoms to a greater extent than with the government's pursuit of traditional crime?

READ

Governance

Review the [ICANN website](#).

Identifying which jurisdiction controls activity on the Internet is a difficult issue. The basic issues discussed in this 2004 law review article remain accurate. [Approaches to Cybercrime Jurisdiction](#).

[Guardians of the internet: The 14 people who control the security of the world wide web – and literally hold the KEYS to the internet](#) (Read article and watch short video embedded in article)

Jonathan Zittrain, The New Republic, "[No, Barack Obama Isn't Handing Control of the Internet Over to China: The misguided freakout over ICANN](#)," (March 24, 2015)

Listen to the NPR report "[Cyber Sleuths Zero In as Web Fraud Takes Toll](#)"

[FY 2017–2019 Joint Strategic Plan on Intellectual Property Enforcement, Supporting Innovation, Creativity & Enterprise: Charting A Path Ahead](#)

Cybercrime

[Internet Crime Report, FBI Internet Crime Complaint Center - Annual Reports](#)

Review the most recent annual report.

[Convention on Cybercrime](#) The US ratified in 2006. What is this? Implications? Utility? Site maintained by the Council of Europe.

This very early cyberstalking case occurred close to home. *NOTE: the case addresses the nature of threats and includes violent and sexually explicit content.* It is important to read the opinion and the dissent (which contains the more explicit materials) for the purpose of class discussion.

[United States v. Abraham Jacob Alkhabaz \(6th Cir. 1997\)](#)

[Consider The Internet of Garbage by Sarah Jeong. Recent appointment to NYT editorial board stoked criticism.]

[Where Anonymity Breeds Contempt](#), New York Times, November 29, 2010

LOOK

Recommended

Jonathan L. Zittrain, [The Future of the Internet -- And How to Stop It](#) (Yale University Press & Penguin UK 2008). (Open access version courtesy of Harvard and Yale University Press below – also for sale).

This article from a prominent legal scholar offers thoughts on crime in virtual worlds:
Kerr, Orin, [Criminal Law in Virtual Worlds](#), University of Chicago Legal Forum

Kerr, Orin, [‘Does the federal computer hacking law apply to a laptop not connected to the Internet?’](#), The Washington Post, August 25, 2014

[What is Internet Governance?](#), Council on Foreign Relations

[Maintaining US Leadership in Internet Governance](#), Council of Foreign Relations

The Global War for Internet Governance, Laura DeNardis (Book in UM Library)

November 23 – Thanksgiving Holiday – No Class

Week 12 – December 4: Presentations and discussion

Read your classmates papers for the presentations.

Attendance and participation in these classes is critical.

Week 13 - December 11: Presentations and discussion - Last day of class

What have you learned? What surprised you? How had this course affected your thinking about the topic overall?

There is no final exam for this class.