

PHIL4000-001—PHILOSOPHICAL PROBLEMS: PHILOSOPHY & COPYRIGHT

MWF 12:00-12:50, Eng/Phil 264

Instructor

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Office hours: Mondays 2:00-3:30; Tuesdays 12:00-1:30

Course Description

This course will focus on some of the philosophical problems of copyright law, including: What *is* copyright? Why think *anyone* has it? Is copyright infringement just plagiarism? What is an “authored work”? How is it different from an artwork? What is “originality” anyway, and why does it matter? Should you have any right to *others’* copyrighted works? Why can’t you copyright an improvised piece of music? The course, as such, will represent an overlap in several core areas of philosophy: aesthetics, ethics, metaphysics, and philosophy of the law.

Core Texts

- Required: Cohen, Loren, Okediji, and O’Rourke, *Copyright in a Global Information Economy*, 3rd Ed. (2010: Aspen; ISBN: 978-0-7355-9196-7)
- Recommended: Cohen, Loren, Okediji, and O’Rourke, *Copyright in a Global Information Economy: 2010 Statutory Supplement* (2010: Aspen; ISBN: 978-0-7355-9053-3)

(Additional readings will either be available on Lexis Nexus or will be made available in PDF form on my website at www.tytoken.com, under “courses”.)

Course Requirements

Your final grade will depend on the percentage you earn of the total points possible in the class: A+: 97-100; A: 94-96; A-: 90-93; B+: 87-89; B: 84-86; B-: 80-83; C+: 77-79; C: 74-76; C-: 70-73; D+: 67-69; D: 64-66; D-: 60-63.

Papers

You will have to write two 5-to-6-page papers and two 10-to-12-page papers during the course of this term.

Short Papers

The two shorter papers will be grounded on materials covered in the first quarter of the term, seeking to draw out, investigate, or analyze philosophical questions from aspects of the law. Each paper should focus on some specific topic covered in one of the classes from Jan. 14 to Feb. 9, and is due within one week of that class. Students may not write papers on any two back-to-back topics. Each short paper is worth 15% of your final grade.

Long Papers

Each of the two longer papers should represent a more extended philosophical investigation into one of the central topics covered in the last three quarters of the term: Grounding the Right of Copyright; Ontology and Intellectual Property; Originality; Idea, Expression, and Merger; Utility and Conceptual Separability; Fair Use (Typically, any longer paper may overlap with some shorter paper written for the first quarter of the term. With special, expressed permission, students may write a longer paper on some topic not falling under these headings.) Students may not write both longer papers on any one topic area. Generally, papers are due within two weeks of the close of the respective topic, except for any papers on Fair Use, which are due May. 9. Each long paper is worth 30% of your final grade.

Participation

The final 10% of your grade is your participation grade. Participation includes doing the assigned readings *before* the class in which the reading shall be discussed, taking active part in class discussion, and putting serious effort into your papers. Participation also includes attendance. For every class you miss without authorized excuse, your participation grade will be deducted 1 point (that is, 1% of your final grade, up to the 10% encompassed by the participation grade). See also “Classroom Courtesy” below.

Special Accommodations

- Any student who, because of a disability, may require special arrangements in order to meet the course requirements should contact the instructor as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services during the instructor’s office hours. Please note instructors are not allowed to provide classroom accommodations to a student until appropriate verification from Student Disability Services has been provided. For additional information, you may contact the Student Disability Services office in 335 West Hall or 806-742-2405.
- You will not be penalized for any absences due to religious observances. However, it is your responsibility to inform me in advance of any intended absences for religious observance *as soon as possible* so that we can make other arrangements. As well, it remains your responsibility to have read the material assigned for that day and to obtain any notes from one of your classmates for classes missed.

Classroom Courtesy

Please be courteous to your fellow students and avoid unnecessary disruptions. Arrive on time, leave on time, and *turn off your cell phone during class*. Note that if your cell phone rings during class, *I will answer it*. Laptops are permitted in class, but please do not abuse this privilege. Text-messaging is *not* permitted during my class. If I see you text-messaging during class-time, your participation grade will be deducted 1 point. This is your only warning.

Academic Integrity and Irresponsibility

I take incidents of academic misconduct *very seriously*. These include but are not restricted to cheating, plagiarism, collusion, and fabrication. Penalties are dependent on the nature of the misconduct, and may involve disciplinary proceedings with the Student Judicial Programs. Knowing what constitutes academic misconduct is *your responsibility*. If you have a concern about what constitutes academic dishonesty *prior to turning in an assignment*, please see me, and I will be happy to help you. For more information, see <http://www.depts.ttu.edu/studentjudicialprograms/academicinteg.php>.

Course Schedule

(Readings marked [L] are available on Lexis-Nexis; readings marked [P] will be made available as PDFs.)

Date	Topic	Readings
Wed Jan 12	Introduction	<i>No readings</i>
Fri Jan 14	Fixation & Originality	Cohen, Chapter 2, pp. 45-99
Mon Jan 17	<i>No classes</i>	
Wed Jan 19	Authorship	Cohen, Chapter 2, pp. 99-141
Fri Jan 21	Useful Articles & Computer Software	Cohen, Chapter 4, pp. 191-242 (§3, pp. 207-215 <i>optional</i>)
Mon Jan 24	Architectural Works, Characters, & Databases	Cohen, Chapter 4, pp. 246-280
Wed Jan 26	Infringement & Reproduction	Cohen, Chapter 5, pp. 289-341
Fri Jan 28	Distribution & Derivative Works	Cohen, Chapter 5, pp. 341-392 (§3, pp. 358-365 <i>optional</i>)

Mon Jan 31	Moral Rights & Performance	Cohen, Chapter 5, pp. 392-428
Wed Feb 2	Copyright & The Music Industry	Cohen, Chapter 5, pp. 436-468
Fri Feb 4	The Different Faces of Infringement	Cohen, Chapter 6, pp. 469-521
Mon Feb 7	Fair Use Doctrine	Cohen, Chapter 7, pp. 529-603
Wed Feb 9		<i>No new readings</i>
Fri Feb 11	Grounding the Right of Copyright	Justin Hughes, "The Philosophy of Intellectual Property" (1988) [L]
Mon Feb 14		Edwin C. Hettinger, "Deserving to Own Intellectual Property" (1989) [L]
Wed Feb 16		Wendy J. Gordon, "A Property Right in Self-Expression" (1993) [L]
Fri Feb 18		Donald L. Diefenbach, "The Constitutional and Moral Justification for Private Intellectual Property" (1994) [P]
Mon Feb 21		Darren Hudson Hick, "Finding a Foundation: Copyright and the Creative Act" (2009) [P]
Wed Feb 23		<i>No readings</i>
Fri Feb 25		Ontology and Intellectual Property
Mon Feb 28	James Wilson, "Ontology and the Regulation of Intellectual Property" (2010) [P]	
Wed Mar 2	Darren Hudson Hick, "Toward an Ontology of Authored Works" (forthcoming, 2011) [P]	
Fri Mar 4	<i>No readings</i>	
Mon Mar 7	Originality	Peter Jaszi, "On the Author Effect" (1994) [P]
Wed Mar 9		Jane C. Ginsburg, "The Concept of Authorship in Comparative Copyright Law" (2005) [L]
Fri Mar 11		Diane L. Zimmerman, "It's an Original(?)" (2005) [L]
Mar 12-20	<i>Spring break</i>	
Mon Mar 21		Russ Versteeg, "Originality and Creativity in Copyright Law" (2007) [P]
Wed Mar 23		<i>No readings</i>
Fri Mar 25	Idea, Expression, and Merger	Robert Yale Libott, "Round the Prickly Pear" (1967) [P]
Mon Mar 28		Edward Samuels, "The Idea-Expression Dichotomy in Copyright Law" (1989) [L]
Wed Mar 30		Abraham Drassinower, "A Rights-Based View of the Idea/Expression Dichotomy in Copyright Law" (2003) [L: <i>Search under "International Legal", "Canadian Law Journals"</i>]
Fri Apr 1		Darren Hudson Hick, "Making Sense of the Copyrightability of Plots" (2009) [P]
Mon Apr 4		<i>No readings</i>
Wed Apr 6	Utility and Conceptual Separability	Robert C. Denicola, "Applied Art and Industrial Design: A Suggested Approach to Copyright in Useful Articles" (1983) [L]
Fri Apr 8		Raymond M. Polakovic, "Should the Bauhaus be in the Copyright Doghouse? Rethinking Conceptual Separability" (1993) [L]

Mon Apr 11		Barton R. Keyes, "Alive and Well: The (Still) Ongoing Debate Surrounding Conceptual Separability in American Copyright Law" (2008) [L]
Wed Apr 13		Darren Hudson Hick, "Conceptual Problems of Conceptual Separability and the Non-Usefulness of the Useful Articles Distinction" (2010) [P]
Fri Apr 15		<i>No readings</i>
Mon Apr 18	Fair Use	Ruth Okediji, "Givers, Takers, and Other Kinds of Users: A Fair use Doctrine for Cyberspace" (2001) [L]
Wed Apr 20		Benjamin G. Damnstedt, "Limiting Locke: A Natural Law Justification for the Fair Use Doctrine" (2003) [L]
Fri Apr 22		Jacqueline D. Lipton, "Solving the Digital Piracy Puzzle: Disaggregating Fair Use from the DMCA's Anti-Device Provisions" (2005) [L]
Mon Apr 25	<i>No classes</i>	
Wed Apr 27		Matthew Sag, "God in the Machine: A New Structural Analysis of Copyright's Fair use Doctrine" (2005) [L]
Fri Apr 29		Darren Hudson Hick, "Mystery and Misdirection: Some Problems of Fair Use and Users' Rights" (2009) [P]
Mon May 2		<i>No readings</i>