

Internet Sharing v. the Law
Copyright and Trademark for Afghan Media Professionals

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AJEEP

Internet Sharing v. the Law

Presented by Larry Sokoloff

Course Description

This course will look at intellectual property, and how copyrighted and trademark material can be used. The internet has made copyrighted and trademarked material easily accessible, from music to movies to entire libraries of books. How does a nation such as Afghanistan fit into an established system? How does any citizen of the world know what is okay to use when the technology keeps changing? This course will cover this area of law, and leave the student better equipped to understand some of the current challenges.

Course Goals and Student Learning Objectives

Students will become well-versed in copyright issues raised by the internet. They will understand key concepts and be able to use this material to teach their own course to Afghan university students.

Course Content Learning Outcomes

Upon successful completion of this course, students will be able to:

LO1 understand the basics of copyright law, and how copyrighted materials are protected.

LO2 understand when photographs can be used without running into copyright issues.

LO3 be familiar with the concept of fair use of copyrighted material

LO4 understand how the internet has changed the use of copyrighted material, and how some nations are attempting to regulate use of this material.

LO5 understand trademark law, and how to protect trademarks.

LO6 apply knowledge of copyright and trademark law to hypothetical and real life situations.

Required Texts/Readings

Textbook

No textbook will be required.

Other Readings

www.copyright.gov (website of the United States Copyright Office)

www.wipo.int, website of the World Intellectual Property Organization,

<http://www.good.is/post/youtube-tries-to-teach-kids-about-copyright-law>

"Why Dora the Explorer Can't Come to Your Kid's Birthday Party" from the Wall Street Journal.

Other Equipment / Material Requirements (Optional)

None

Assignments and Grading Policy

Some weeks will include homework assignments, due at the start of the next class.

The first class will involve lecture and in class discussion. There will be no reading assignment in advance. After class, students should review the U.S. government's copyright website, and optionally look at the website for the World Intellectual Property Organization. Both websites are listed above. Homework assignment will be given, due at second class.

For Second Class: Homework assignment is due. Class will involve lecture and discussion on works for hire, satire and parody, and copyright on the internet. Internet video should be viewed after class.

For Third Class: Class will involve lecture and discussion music and copyright, fair use and moral rights. Homework assignment will be given, due at fourth class.

For Fourth Class: Homework assignment is due. Class will focus on trademark and international copyright treaties. Reading assigned at end of class to create more familiarity with trademark issues, no assignment results from reading.

For Fifth Class: Class will focus on peer to peer file sharing, and efforts to stop online piracy through laws and regulations.

For Sixth Class: Pulling together material from previous classes, this class will involve in-class discussion on copyright and trademark issues that could arise from starting a broadcast news show. An open-note final exam will be given during the second half of the class.

Take home assignments due second and fourth will be worth 30% each, or 60% of final grade. Participation, especially during sixth class, will be worth 20% of final grade. A final exam at the sixth class will be worth 20% of the total grade. This should total 100%.

There is no extra credit available. Late papers will be marked down, depending on when they are received. A passing grade for the course is 50% of the points in the class.

Final exam is sixth class.

Internet Sharing v. the law

This schedule is subject to change with fair notice, which will be provided via email.

Class	Date	Topics, Readings, Assignments, Deadlines
1		In class introduction to copyright law. Reading assignment is to review the U.S. government copyright website, and use the information there to complete first homework assignment, which will be distributed in class. Website is www.copyright.gov .
2		Assignment due from last week. Class will focus on various aspects of copyright law. Watch video on copyright law posted on YouTube, http://www.good.is/post/youtube-tries-to-teach-kids-about-copyright-law . You can also do a google search for "YouTube tries to teach kids about copyright law," and find it that way.
3		Class will focus on music, fair use and moral rights. Homework assignment given, due at fourth class.
4		Assignment due at start of class. Class will focus trademark and international copyright treaties. Students should read article found on a google search, "Why Dora the Explorer Can't Come to Your Kid's Birthday Party" from the Wall Street Journal, July 22, 2008.
5		Class will focus on peer to peer file sharing and stopping online piracy. Students should review notes for final and in-class exercises at sixth class.
6		In-class discussion, participation required. Final exam given in second half hour of class. Open note exam.

Key technical terms for module on Internet Sharing v. the Law

1. copyright definition
2. trademark definition
3. length of copyright
4. notice of copyright
5. royalties
6. licenses
7. public domain
8. work made for hire
9. derivative work
10. fair use/fair dealing
11. moral rights
12. Berne Convention
13. Peer to peer sharing
14. Stop Online Privacy Act
15. Creative Commons

Class No. 1 on Copyright. Afghan Media Law

Welcome to this class. Let's start by introducing ourselves to each other, and find out what interested you in this subject.

Copyright is an important subject to learn.

It comes up often in people's jobs, what they can use and what they should not copy.

At the same time, the internet has changed everything, by making information easily accessible to all.

So people copy illegally from the internet often. This has led to calls for more regulation and laws.

In the future, new technology may change how easy it is to copy information, and may limit use of information from the internet.

Start by defining the word copyright.

Copyright has to do with intellectual property, abbreviated as IP.

Intellectual property is anything that is created by the human mind. It can be a book, a poem, a song, a tune to a song, artistic work, a photograph, etc.

It is anything that has been created through interpretation or imagination.

It becomes property of the creator.

It is a form of property, much like owning a house or piece of land is.

That is why it is called intellectual property.

Copyright is the right that protects the creator when other people want to use the work.

It means that other people have to pay the creator, or get permission, if they want to use the creation.

An example: a famous picture taken by the American photographer Ansel Adams or Annie Leibovitz. Anyone who wants to use the picture in a poster or on a t-shirt or in a book, is supposed to pay for this privilege.

How much? The exact fee is negotiated between the person who wants to use the picture and the photographer.

Ansel Adams died in 1984, so the photographer's heirs would get to negotiate. This is something else that we will emphasize. Copyrights generally don't die with the person, but last for a certain number of years after the person is dead. Copyrights don't last forever, though.

Sometimes when a copyright is used with permission, we say that the person using it was granted a license to do so. And when there are payments made for using a copyright, we say that royalties are paid. This is the fee that is used.

A copyright is different from a trademarked item. It is also different from a patented item.

What is a trademark? This is something that will also be discussed later in this course.

But briefly, a trademark is something that identifies a business or service. It might be a special name, such as Nike, the American athletic company. Or it might be the slogan

that is familiar to Nike customers: Just do it. No one else can use that name or slogan without permission of Nike. The same goes with the fast food restaurant, McDonald's.

A patent is something that is invented, like a machine. No one else can make that machine unless the patent holder allows it. So think of this as being for inventions. Other things that are patented are software programs and processes in business. This is a little outside of this area of study.

What can be copyrighted? Well, as previously noted, something that is created. It's easier to talk about what cannot be copyrighted.

A government report is not copyrighted, nor is a court opinion. That is because it is produced with public money, and therefore belongs to everyone. This is called being in the public domain. It belongs to everyone.

Another example of something that is in the public domain is something that is no longer covered by copyright. This might be the creative work of someone who lived two centuries ago, like the music of Beethoven, or something that has never been copyrighted.

Length of copyright. Each country has its own laws on this. In the United States, it is the life of the author plus 75 years in most situations. What does this mean? If you create something when you are 25 years and get it copyrighted, then the copyright is going to last your whole life. And if you're lucky enough to live to be 104, then the copyright last all that time. Then after you die, the people who inherit your property (known as your heirs) get to keep the copyright another 75 years.

That is a long time, but it is not forever. The thinking is it shouldn't last forever because the benefits then go to the people who didn't know you, long after you died. Also, when copyrights end, everyone can use the material, and it becomes part of our shared culture..

In other countries, including yours, copyrights last for shorter periods of time. In Afghanistan, I understand a copyright lasts for only 50 years.

In the United States, it is controversial that copyrights last so long, and they have only been this long in the past 20 years. One of the reasons may be that entertainment companies want to keep making money on their movies and songs and characters. There have been court cases to challenge the length of copyrights, and someday copyrights may be shorter again. Many people feel that it isn't fair to have to pay royalties for something that has been around a long time. They begin to feel it is part of their culture, and they shouldn't be charged for it.

Copyright creation: It depends. In the United States, there are several ways to create a copyright. Just by the act of creating something, it is considered copyrighted. But how do you prove that the thing that you are claiming you created is really yours? It is helpful to have proof so you can then win in court. Other ways to create a copyright is to send yourself whatever it is in the mail. In the United States, the post office puts a date

on each piece of mail that it delivers, so this helps prove ownership. Sometimes, you can do something similar on a computer, or maybe you can email something back to yourself.

Another way to prove copyright is to write a C with a circle around it. I don't know if this will work in Afghanistan, but in the United States it is a way to make other people aware that the work is copyrighted. Often, the year of the copyright is also placed after the circled C.

Finally, in the U.S. a person can register a copyright with a national office based in Washington D.C. It costs \$30. The best part of it is that other creators can then investigate if something is copyrighted by checking a national registry of copyright works, and even find out if they need to pay royalties to the original copyright holder. And if a copyright holder ever wants to sue someone for violating a copyright, they can get more money from a court if their copyright is registered.

Copyright Law in Afghanistan

There is no specific law of copyright in Afghanistan. There is a trademark registration law, which is said to include some copyright law in it. (Trademark has to do with business and commercial names and symbols, so it is a little different, and is something we will discuss in a future class). Afghanistan's Ministry of Commerce and Industries and its international donor agencies are drafting an intellectual property law, but it has not yet been made available. According to the Afghanistan Investment Support Agency, materials on copyright may be found in the Trademark registration law, published on 10/06/1388 (Herji Shamsi Year) serial number 995, or by visiting the website of the Ministry of Justice, at www.moj.gov.af.

Discussion questions for this class are integrated into the class presentation and homework.

Reading to do:

The following two pages provide an overview of all the subjects on copyright law encapsulated in one country's copyright laws. To give an idea of how material is involved, it contains 13 chapters and 13 appendices.

Homework assignment follows these two pages.

Copyright Law of the United States

and Related Laws Contained in Title 17 of the United States Code

 **Complete version of the U.S. Copyright Law, December 2011 [PDF format = 2 Mb]**

-   Preface: Amendments to Title 17 since 1976
-  Chapter 1: Subject Matter and Scope of Copyright
-   Chapter 2: Copyright Ownership and Transfer
-   Chapter 3: Duration of Copyright
-   Chapter 4: Copyright Notice, Deposit, and Registration
-   Chapter 5: Copyright Infringement and Remedies
-   Chapter 6: Importation and Exportation
-   Chapter 7: Copyright Office
-   Chapter 8: Proceedings by Copyright Royalty Judges
-   Chapter 9: Protection of Semiconductor Chip Products
-   Chapter 10: Digital Audio Recording Devices and Media
-   Chapter 11: Sound Recordings and Music Videos
-  Chapter 12: Copyright Protection and Management Systems
-   Chapter 13: Protection of Original Designs
-   Appendix A: The Copyright Act of 1976
-   Appendix B: The Digital Millennium Copyright Act of 1998
-   Appendix C: The Copyright Royalty and Distribution Reform Act of 2004
-   Appendix D: The Satellite Home Viewer Extension and Reauthorization Act of 2004
-  Appendix E: The Intellectual Property Protection and Courts Amendments Act of 2004
-  Appendix F: The Prioritizing Resources and Organization for Intellectual Property Act of 2008
-   Appendix G: The Satellite Television Extension and Localism Act of 2010
-   Appendix H: Title 18 — Crimes and Criminal Procedure, U. S. Code
-   Appendix I: Title 28 — Judiciary and Judicial Procedure, U. S. Code
-   Appendix J: Title 44 — Public Printing and Documents, U. S. Code



Appendix K: The Berne Convention Implementation Act of 1988



Appendix L: The Uruguay Round Agreements Act of 1994



Appendix M: GATT/Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement, Part II



Appendix N: Definition of "Berne Convention Work"

This publication is also known as Circular 92.

Copyright Law of the United States of America is available in print for \$32. Order from: **U.S. Government Bookstore**

Homework assignment to be done for Second Class on Internet Sharing

Looking at the website of the United States Copyright Office (www.copyright.gov), answer the following questions:

1. Is my copyright good in other countries?
2. Is something copyrighted in the United States also copyrighted in Afghanistan?
3. What is a copyright?
4. Can foreigners register a work in the United States?
5. How is a copyright registered?
6. How do you use someone else's work?

Please type up your answers on a double-spaced paper. Papers should be about one page long.

Slides to be used:

Copyright Basics

- **Definition of copyright, a form of creative property**
- **Use usually requires license, royalties, or permission**
- **Compare to trademarks and patents**
- **How long does a copyright last?**
- **How is it created?**



Class Two, Copyright

Start with a review of last time: what is a copyright? How long does it last? How is a copyright created? How does it differ from a trademark and a patent?

More issues: Works made at a job. Copyright creation was previously discussed, along with how copyright is created, and ownership by its creator. Who owns a creation made by an employee working for a company? When the employee stops working for the company, is the copyright a piece of property that the worker owns, and takes? No. It is considered the property of the company. Why? Because they paid the worker's salary. The copyright is something that the company paid for.

So the person who creates a song or a cartoon character can't take it with them when they leave. In the U.S., this is called a work for hire.

Satire and parody. What are these two words?

Satire is a literary work in which human vice or foolishness is attached through irony, derision or wit.

Parody is mimicking and poking fun at other creators' work. So it might mean taking a famous song and changing the words to it, or making fun of a famous advertisement for comedic purposes.

If everything is copyrighted, how can we do this? It would be impossible to make fun of an existing work without having to pay the original author for its use.

The courts in the United States have interpreted satire and parody as part of the freedoms Americans have to discuss just about anything. The courts say if the satire or parody creates something new, then it is protected from copyright laws. The person who makes the new satire or parody can even copyright this new creation.

Copyright and the Internet

But in recent years, the people who have wanted to do satire and parody have wanted to do this on the internet. So they will take a clip from a famous tv show or a song and make it their own, perhaps singing it in a new way or changing a few words. The people who own these copyrights will look all over the internet and try to take down the clips, saying it is a violation of copyright law. And in some ways, because of how pervasive a world wide internet is, it's easy for them to find the offenders. There are lawsuits and efforts by entertainment companies to remove all this from the internet. Much of this is due to the rise of such companies as YouTube, which allows people to post their own videos on the internet. There have been many court cases over this issue. It usually comes down to how much of the copyrighted material is used.

Each country has its own copyright laws and enforces them at home. But with the rise of the internet, now it is easy to use something copyrighted in one country in another one. There are a number of international agreements (treaties) that are supposed to determine how copyrighted material is used in one country when it comes from another country. It has become more important with the rise of the internet and the ability of people to get information from another country, and to even have it translated by software into one's

own language. Again, movies are often sent between countries due to this new technology.

There is no copyright treaty between the United States and Afghanistan.

The United States entertainment industry is a big part of its economy. They make money by selling copies of their works, and by licensing materials that other businesses want to use. These entertainment companies ask the U.S. to punish countries that use copyrighted materials without permission. The U.S. issues a list of countries that use too much copyrighted materials, and often raises the issues in trade negotiations. It is an ongoing problem.

For many years the United States did not abide by international copyright laws, but as the entertainment industry made more money, it had an incentive do so. The same dynamic might be at work in Afghanistan. As there is more money to be made in copyrighted materials, the need to abide by international copyright laws will grow greater. This will be discussed in a future class, too.

One way around all these problems is a doctrine called fair use, a method making it okay to use copyrighted material in small amounts. This will be discussed in a future class.

How can a journalist write about a famous person, then, and not have to worry about copyright? If something is considered newsworthy, then it is something that can be discussed freely without fear of violating copyright laws. Media professionals get to decide if something is newsworthy.

One important part of delivering the news is presenting facts. Facts cannot be copyrighted.

An example would be if the government announces that Afghanistan has 45 million people. That is information that everyone can use in articles. It's a fact.

Copyrights are for creative information. So the fact of 45 million people cannot be copyrighted. But if an author writes a poem about the country's size, or does a news article about it using photos, those interpretations of the fact could be copyrighted.

Continuing to look at newsworthy events, what if someone famous does a concert in Kabul? Can it be recorded by those in the audience, who then sell it to other people? The famous singer might ban cameras from the concert, so that no one can take pictures. But in an age of cameras on cellphones, that is much more difficult to enforce. By going to the concert, there is often an agreement on the backs of tickets that people will agree not to take pictures for commercial use. It gets more complicated if this happens in a public space where no one has paid to get in. These are copyright questions.

Pictures of Famous People and Copyright. Can pictures of famous people be copyrighted? In an advertisement, can a picture of a famous person be used without

permission, for example? Can a company say that a famous soccer player or actor endorses its beverage? These laws vary by country. But in general, famous people own the right to their pictures in advertising. This is not the same as owning the right to their pictures everywhere. But they can make money by agreeing to have their pictures used to sell a product, and so they guard the use of their photos, or sometimes even the use of their voices, in radio ads.

But what happens if our newspaper or magazine wants to use their picture on the cover? This is not considered an advertisement, but is considered newsworthy, so it usually is allowed. The picture should be one that is not copyrighted, perhaps one that a photographer has taken for publication, and it should be okay.

Ownership of a person's image for advertising usually falls under the legal area of invasion of privacy, which is a little different than copyright. But trying to understand one area of the law leads to another area of the law as well.

Second Class, discussion questions:

Do you think that an employer should own the copyright of a creation made at a job?

What if the employee creates something on their own time after work while employed?

Should this copyright also belong to the employer?

Are you aware of any efforts to limit satire and parody by using copyright concerns?

Is there a way to have a vigorous debate about political issues if satire and parody are banned or limited?

Slides to be used:

Second Class, Internet/Copyright

- Review and discuss homework
- Works made for hire
- Satire and parody and copyright
- Copyright and the internet
- Pictures of famous people
- Newsworthiness

Example of Famous People



Class Three

Review:

To review the previous class, several things were discussed: protecting copyrights on the internet, when an item is considered newsworthy so copyright issues don't apply, and works made at a job. Using satire and parody were also discussed.

In the U.S., if someone wants a person to stop using their copyrighted material, they can send what is called a "cease and desist" letter. That means to stop publishing or posting something immediately, or else a lawsuit might be filed. Many copyright disputes do end up in court. Attorneys are expensive, and even if the person being sued is right, they might still have to pay money to an attorney to defend a lawsuit.

In the previous class, it was also discussed how covering a legitimate news event often means protection from copyright problems. Journalists are covering issues of public significance.

Using a famous person's likeness or voice might lead to trouble for someone in advertising. That's considered a commercial use of the person's image, and only the famous person should be able to use that in an advertising setting.

Music and copyright:

A big area where copyright issues arise has to do with using copyrighted music. To use another's copyrighted music, first get their permission, either through a license or paying royalties. As an example, a restaurant that plays music for entertainment needs to get permission because they are making money off another person's work. There are several parts to music: the musical notes, the lyrics, and the original sound recording. Permission might be needed on all of this. Companies in the United States specialize in getting permission for this use. Other companies track down businesses in the U.S. that are using copyrighted music without permission.

Fair Use:

It is difficult to report on or discuss issues in our modern world without using a little bit of a copyrighted work, in a film clip or by quoting material. This is allowed in some countries. It is called Fair Use in the United States, and Fair Dealing in commonwealth countries like Canada, Singapore, and New Zealand. Poland and South Korea have their own versions as well.

Fair Use allows a non-copyright holder to use a small portion of an existing copyright in their own work. One example might be a movie review, in which a small clip of a new movie is shown, to interest people in going to see the movie.

If someone is writing about a book, they might be able to quote a few lines in order to make their review of the book more interesting. The question arises with the internet, whether using a few clips of a music video should be allowed. The American courts are still confused on this one. What copyright holders often want is for the entire clip on

YouTube should be taken down. Would it be sufficient for a few seconds of video to be taken down?

An example might be a mother singing a famous song, and then making a video and posting it on YouTube. Is this a violation of copyright, because the song is copyrighted? Does it cut into the profits of the original song? Would the mother expect to make any money from this clip, or is she doing it for fun? These are the kinds of questions that courts ask when trying to determine if something is fair use.

The companies that own the copyrighted material have big staffs and computers to use to see if their film or music is showing up on the internet. And they fight hard to get it taken down. They will go to court, or attempt to make sure it is blocked from appearing on the internet. They feel that they need to have a strong presence to block things on the internet.

In the United States, music companies have lost a long battle to prevent people from downloading (copying) music on the internet. Everyone knows it is wrong, but many Americans still do it. Music companies sometimes file lawsuits against people they catch, to make an example for other consumers.

Often, the courts aren't as concerned about fair use if the use is in a classroom setting. There are companies that make their living off of educational materials, so not everything passes without a fight. If a teacher uses a handout in a non-profit public school, they may face lesser consequences than if they were in a for profit school. There are places on the internet to use as a checklist to see if something violates Fair Use.

So if someone accuses a person of stealing their copyrighted material, a good defense is that it's Fair Use.

Another area of concern under copyright laws is called Moral rights. This is most popular in Europe, but finds its way into international copyright agreements. Moral rights gives an author more control over use of his name in association with a work, and a right to integrity, giving the author the right to control alterations and prevent distortion of the work. It is something else an author can sue for. While it is confusing, it is one more thing to be aware of. In the United States, moral rights only applies to visual work, and is much more limited than the usual copyright protections.

Third class, discussion questions:

How do you listen to music?

Do you think musicians should be compensated everytime you listen to a song from a download?

Can you think of situations where Fair Use has come up in your own profession, or life?

Do you think an artist should have moral rights, giving them control over any alterations of their work?

Slide to be used:

Third Class, Copyright/Internet

- Review
- Music and copyright
- Fair Use/Fair Dealing
- Moral rights



Assignment

Given at class three on copyright, due in class four

To better understand fair use, this assignment will focus on art collages, and mashup music.

A collage is made by pasting various materials, not associated with one another, such as newspaper clippings, parts of a photo, theater tickets, fragments of an envelope.

A mashup is a song or composition created by combining or blending two songs together, to create a new song.

There are two ways to complete this assignment. Write a short essay based on either number one or two listed below.

1. Make a collage, and bring it to class, or think about a collage you have seen, maybe a famous one done by the artist Pablo Picasso. Bring a picture to class of the one you have seen, and pretend it's your own.

Then write at least two paragraphs on your self-made collage or the one you find online.

Answer the following questions:

If you make a collage, what parts can you copyright?

What parts of the collage are going to cause problems if you try to sell it?

Why might you have a problem if you try to sell a collage as your own?

2. If you are more interested in music, listen to a mashup composition online. Then write about it also in at least two paragraphs.

What did you listen to? How did it sound?

If you were mixing a tape of various music, do you think you would face problems, trying to copyright your own remix of other creators' work?

How could you argue that this is your own work?

What other things that we have discussed might help you defend yourself against copyright infringement issues?

Class Four

To review the previous class, we had discussed how one can use a limited portion of another's copyrighted material in small portions, called fair use or fair reasoning. We also talked about getting a license to use another's music.

This class will cover two issues: international copyright law and trademarks.

Trademarks

Afghanistan has its own trademark law, and it is similar in some respects to what is used in the United States. Do you recall from an earlier class, what is a trademark?

Definition: A trademark is a distinguishing mark for a business or product. It protects a logo or a name that distinguishes a good or service. Often, this is a picture or a symbol that is used for a company. The swoosh is the symbol for Nike shoes. Sometimes a trademark can be a sound. The roar of the MGM lion is one that is familiar to movie patrons at the start of a film. When a computer is turned on, there is a trademarked sound that a Microsoft operating system makes.

The benefit of a trademark is that it helps the consumer know to expect a certain level of quality by buying the product or going into a store. If a person goes into a McDonald's anywhere in the world, they will know to expect certain recipes, a certain look inside the restaurant, certain tastes and certain quality. Therefore, McDonald's doesn't want anyone else to use their name, and confuse people.

Can you think of any businesses or products that are trademarked?

In order to get a trademark, companies must register their name, logo, symbol or sound with the government. In Afghanistan, like the U.S., trademarks last ten years. Why don't they last forever? Because businesses open and close, and in ten years they may be gone. If a person starts a business that looks like a copy of another business, they can expect to be sued for trademark infringement. Trademark infringement means you stole the other person's trademark, or used it without their permission.

Not everything can be trademarked. A flag of a country belongs to everyone, and it can't be trademarked. A geographical name cannot be trademarked. For example, the name Kabul can't be trademarked. Many people would want to use this word in their business name.

Usually the way to tell if something is trademarked is to look at the symbols that follow it. So in the U.S, the letters R or TM with circles around them indicates something is trademarked. In the U.S., both federal and state agencies have a list of what has been trademarked. A new business owner can easily learn what has been trademarked by going on the internet to the appropriate government agency.

International Copyright Treaties

Can a copyright be made to cover every country in the world? No, there is no such thing. The laws of each country must be examined. Some countries have more copyright laws than others. But there are international treaties designed to create some uniformity on copyrights across borders.

The key treaty on copyright law is the Berne Union for the Protection of Literary and Artistic Property, also known as the Berne Convention. Berne is a city in Switzerland. More than 80 countries have signed it. The Berne Convention is overseen by the World Intellectual Property Organization, run through the United Nations.

There are other copyright conventions including the Universal Copyright Convention.

The World Trade Organization is also involved in international copyright issues.

Homework

For homework, read <http://online.wsj.com/article/SB121668580918972073-email.html>, "Why Dora the Explorer Can't Come to your Kid's Birthday Party" from the Wall Street Journal.

Fourth class, discussion questions:

Can you think of any businesses or products that are trademarked?

Why don't trademarks last forever?

How can you tell if something is trademarked?

Should a copyright be made to cover every country in the world, considering that the internet makes material available worldwide?

Two pages of reading follow providing specific information on trademark in Afghanistan, from a law firm.

Afghanistan

(AF)

News Archive (2)

Trademark Law

Legal basis the trademark laws of Afghanistan in force since August 27th, 2009.

The 9th edition of the Nice classification of goods and services consisting of 45 classes is applied.

Trademark protection is obtained by registration.

Registrable as a trademark are all distinctive and graphically representable signs, three-dimensional forms, sound marks and any combination of the mentioned signs. Signs not deemed distinctive in the examination can be registered if distinctiveness has been acquired by use.

The following trademark types are registrable: trade marks, service marks, collective marks and certification marks.

There is no trademark protection for alcoholic beverages.

Any pictures or other signs which are contrary to the public order or supposed to be immoral are not registerable – on a case by case basis.

Foreign words are not translated.

Proceeding of Trademark Registration

The application is filed at the trademark registration office.

Multi-class applications are possible.

Foreign applicants need a local agent.

A power of attorney authenticated by an Afghan Consulate is necessary.

All the documents submitted should be accompanied with certified local language translations.

Foreign applicants do not need a domestic registration.

The application process includes a formal examination, an examination of distinctiveness and a search for prior trademarks.

Trademark applications accepted by the Registrar are published in two times in the the official gazette prior to registration.

The approximate time frame for completing the registration process of a trademark in Afghanistan is 3 months.

Opposition Period

National:

The opposition period is 365 days from publication date of registration.

Opposition against designation of IR Mark

(The period starts from the national publication date, if not stated differently):

not a member of the Madrid Agreement or Protocol.

Trademark Duration

Protection begins with the date of application. A trademark registration is valid for 10 years from date of application. The registration is renewable for periods of 10 years.

Use Requirements

If the trademark has not been used within 3 years from registration it may be subject to cancellation.

Trademark Application Fees

The official fees will be modified. The new fees will shortly be approved by the Afghan Parliament and applied on the applications filed before at the Commercial Court, but not yet completed the procedures.

Trademark Licensing

Trademark Licence Agreement

In Afghanistan a trademark licence agreement has to be in writing. Licensing of unregistered marks is not permitted. It is possible to register a user for an entire class covered by the trademark. It is unusual to record a licence in respect of only some goods falling in a class. The sale of a registered trademark does not automatically terminate the licence, unless otherwise agreed upon by the parties. There are no statutory provisions prescribing the terms of a licence agreement.

Recordal

There are provisions in law for the mandatory recordal of a licensee. According to Afghani Law all amendments to a licence must be recorded, otherwise the law will not protect the licence as amended. There is no time frame for a recordal and there is no prescribed form or content for the validity of a licence agreement.

The following documents are required for a recordal:

1. A legalised power of attorney,
2. A copy of the licence agreement
3. The original registration certificate and, if the mark has been renewed, the original last renewal certificate

Effectiveness

The licence agreement becomes effective and enforceable against third parties upon the date of the recordal and is published in the Official Gazette once.

Infringement Proceedings

There is an evidentiary presumption that use of a recorded licensee is permitted use. The licensee may join the trademark owner in infringement proceedings and can also call upon the owner to institute infringement proceedings. He is entitled to institute proceedings in his own name if the proprietor refuses or neglects to do so. The licensee is not required to cite the trademark owner as co-defendant in any such proceedings.

Slides to be used:

Fourth Class, trademarks/copyright/internet

- Review and discuss homework due
- Trademarks, definition
- How registered/length of trademarks
- International Copyright treaties

Trademark Notification Symbols



Trademark symbols



Class Five

Review

To review last time, trademarks and international copyright law were discussed.

This class will focus on peer to peer sharing and efforts to regulate it.

Peer to peer sharing

One of the biggest controversies in copyright involves downloading music, movies or videos without the permission of the creator. In the past, money was made by these creators by selling many copies of their work. With the development of software, much of this content could be downloaded for free. So there was a big loss of money for music companies and entertainment companies. Many of those companies are located in the United States.

One way that music can now be downloaded legally is through iTunes, which allows cheap downloads. In the United States, these same music and entertainment companies are trying to get the laws changed to make it easier to punish people who download without paying. Sometimes in the United States, they file lawsuits to stop this illegal downloading. These lawsuits are supposed to set an example to other illegal downloaders, to stop what they're doing or face the same consequences.

Stop Online Piracy Act (SOPA)

In the United States, these same entertainment companies recently tried to get laws changed at the national level with something called the Stop Online Privacy Act. This is important because it will affect copyright on the internet internationally if it passes in some form.

SOPA was in the news most recently in December 2011 and January 2012, when internet service providers began protesting the possibility that the law would pass. They created a huge protest, and some major content providers went dark for a day in January 2012 in order to draw attention to this legislation. As a result, the legislation was withdrawn from debate in the United States Congress, the main legislative body in the United States.

The SOPA law would have limited access to the websites of unauthorized users of copyrighted materials. In others words, it would stop unauthorized streaming of material on the internet. If a company claimed that a website used unauthorized material, it would be immediately be shut down. It probably wouldn't have worked very well, because a new website could then be put up immediately. But it's the kind of law that would probably cause internet service providers to become more cautious, and not allow anything on the internet that might be a violation. The law would have had a major impact on foreign-owned and operated websites. One of the things that the law would have gone after was websites that might be selling counterfeit (fake) drugs, which the

U.S. government wants to stop. But one can also see how it would have had a major impact on the use of copyrighted materials. If a website is accused of using copyrighted materials without permission, it would be shut down.

One way that SOPA would have worked would be to require credit card companies to comply with the law. Since many of the credit card companies and internet service providers are based in the United States, this would have affected internet service throughout the world.

And although SOPA is a law for the United States, it could have impact throughout the world. Other countries can adopt their own versions of SOPA if they want. Canada has considered doing so. And Ireland, in Europe, became the first nation to do so in March 2012, when it adopted its own version of SOPA. It may affect the growth of online business. The law was supported by the music industry in Ireland, but opposed by the high tech industry there, which includes Google and Facebook. It is too soon to see what kind of impact this law has had, but it may be the wave of the future.

The internet has led to so many acts of freedom, to allow people to express themselves, to allow them ask questions, and to gather information, that many people think it is a basic human right to have access to it. So whether the internet can be limited under SOPA-type laws is a good question. Users may be upset and stage protests again. It will be interesting to see if the United State Congress touches this controversial subject anytime soon.

OPEN Act

A separate proposal is called the OPEN Act, which stands for online protection and enforcement of digital trade. It would allow an international trade commission to investigate if a foreign web site is dedicated to piracy. If it its is, it could direct payment firms like Visa and PayPal and advertising firms like Google to stop doing business with the website.

Fifth Class, discussion questions:

Do you think a law that is enacted in the United States to stop internet piracy will have an impact on the rest of the world? Why or why not?

How often do you use credit cards for internet transactions?

Do you think that the proposed SOPA law would lead to less material being available on the internet?

What would be the biggest loss to you if material is removed from the internet due to such laws as SOPA and the Open Act?

Here is the title page of the proposed SOPA bill. Read the next two pages to get an idea of the scope of the proposed legislation.

Bill Text
112th Congress (2011-2012)
H.R.3261.IH

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GO TO</i>
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Contents Display	

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Bill PDF	XML [Help]	Printer Friendly[Help]	Congressional Record References	Bill Summary & Status
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H.R.3261 -- Stop Online Piracy Act (Introduced in House - IH)

Beginning
 October 26, 2011

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

Sec. 1. Short title; table of contents.

SEC. 2. SAVINGS AND SEVERABILITY CLAUSES.

TITLE I--COMBATING ONLINE PIRACY

SEC. 101. DEFINITIONS.

SEC. 102. ACTION BY ATTORNEY GENERAL TO PROTECT U.S. CUSTOMERS AND PREVENT U.S. SUPPORT OF FOREIGN INFRINGING SITES.

SEC. 103. MARKET-BASED SYSTEM TO PROTECT U.S. CUSTOMERS AND PREVENT U.S. FUNDING OF SITES DEDICATED TO THEFT OF U.S. PROPERTY.

SEC. 104. IMMUNITY FOR TAKING VOLUNTARY ACTION AGAINST SITES DEDICATED TO THEFT OF U.S. PROPERTY.

SEC. 105. IMMUNITY FOR TAKING VOLUNTARY ACTION AGAINST SITES THAT ENDANGER PUBLIC HEALTH.

SEC. 106. GUIDELINES AND STUDY.

SEC. 107. DENYING U.S. CAPITAL TO NOTORIOUS FOREIGN INFRINGERS.

TITLE II--ADDITIONAL ENHANCEMENTS TO COMBAT INTELLECTUAL PROPERTY THEFT

SEC. 201. STREAMING OF COPYRIGHTED WORKS IN VIOLATION OF CRIMINAL LAW.

SEC. 202. TRAFFICKING IN INHERENTLY DANGEROUS GOODS OR SERVICES.

SEC. 203. PROTECTING U.S. BUSINESSES FROM FOREIGN AND ECONOMIC ESPIONAGE.

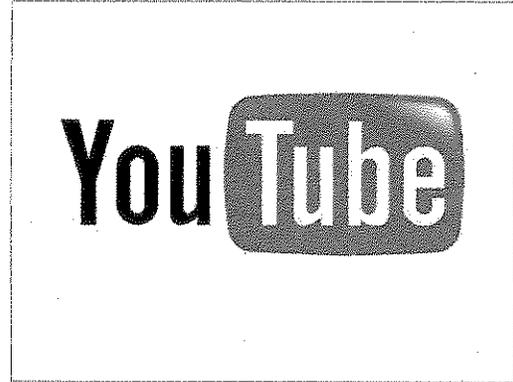
SEC. 204. AMENDMENTS TO SENTENCING GUIDELINES.

SEC. 205. DEFENDING INTELLECTUAL PROPERTY RIGHTS ABROAD.

Slide to be Used:

Fifth Class, Copyright/internet

- Review
- Peer to peer file sharing
- Two proposed laws in the U.S.
 - 1. Stop Online Piracy Act
 - 2. OPEN Act



Class Six, Afghan Copyright

This last class is designed to draw on material that has been previously studied, to determine what students have learned over the course.

Suppose a group is putting together a new broadcast news show. What are some of the issues that would need to be determined in advance of the first broadcast.

Spend several minutes writing down your thoughts, or if possible, discussing with other students.

1. Name your program. Is the name something you will copyright? Will you trademark the name? Is the name already copyrighted or trademarked? What would you do to determine these issues?
2. What kind of logo, are you going to have?
3. What kind of music, if any, are you going to use at the beginning of the show? Where will you get the music?
4. Advertising your show. Can you use a celebrity to advertise your show? What kind of permission do you need?
5. Will you allow others to re-broadcast your show after it airs? Will you copyright the show? How will others know it is copyrighted?
6. Can reporters use clips from other broadcasts, videos or music soundtracks? How much of a clip can they use?
7. Fair Use: how will Fair Use be respected?
8. What happens if your reporters interview someone in front of a copyrighted piece of art? Will they be held responsible for violating the copyright?
9. Who owns the reporters' work after it is created? The station or the reporter?
10. Can a reporter film a trademarked logo and use it on the air?
11. Can reporters use government documents without permission under copyright laws?

One last helpful hint: stock images and material may be available for free at a website called Creative Commons. This is where owners of works choose to make their work available for other people to use. It is worth investigating.

The class ends with a reminder that the rights of creators are guaranteed in the Universal Declaration of Human Rights, Article 27, a key document in international human rights. This article provides for the right to benefit from the protection of moral and material interests resulting from authorship of any scientific, literary or artistic work.

The question is, how do the rest of us fairly use these creations in a world where technology is changing by the minute?

Discussion questions for this class are integrated into the class presentation.

Name: _____

Final, open note exam. Use what you've learned in the class to answer these questions. This is worth two points for each question, for a total of 20 points. For Class Six.

1. What is a copyright?

2. Can you give an example of two things that can be copyrighted?

3. How is a copyright created?

4. What is the Fair Use defense for copyright?

5. What does it mean for something to be in the public domain?

6. What is a trademark?

7. Can you give an example?

Final Page Two, Afghan Copyright

8. How long do trademarks last?

9. What law has the United States Congress tried to pass that might have worldwide implications for copyright?

10. Can you name an international organization that handles copyright issues?

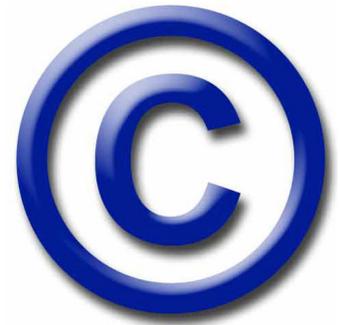
Internet Sharing v. The Law

Copyright and Trademark for Afghan
Media Professionals

By Larry Sokoloff, J.D.

Copyright Basics

- Definition of copyright, a form of creative property
- Use usually requires license, royalties, or permission
- Compare to trademarks and patents
- How long does a copyright last?
- How is it created?



Second Class, Internet/Copyright

- Review and discuss homework
- Works made for hire
- Satire and parody and copyright
- Copyright and the internet
- Pictures of famous people
- Newsworthiness

Examples of Famous People, Internet/Copyright



Third Class, Copyright/Internet

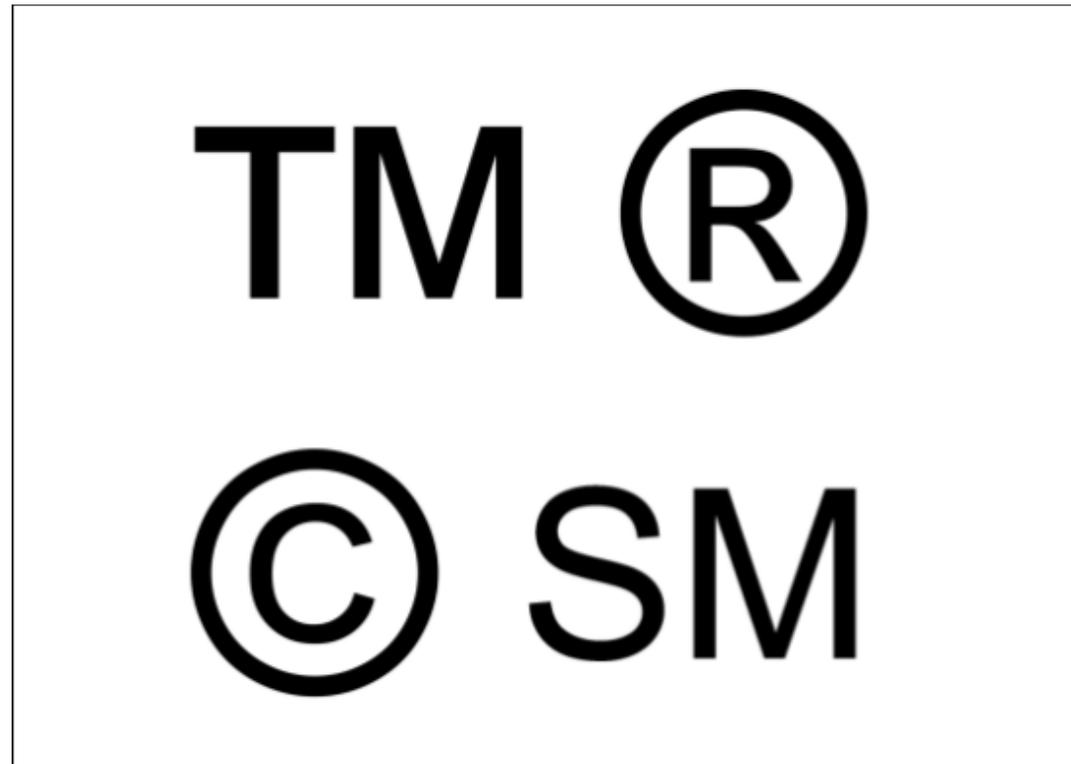
- Review
- Music and copyright
- Fair Use/Fair Dealing
- Moral rights



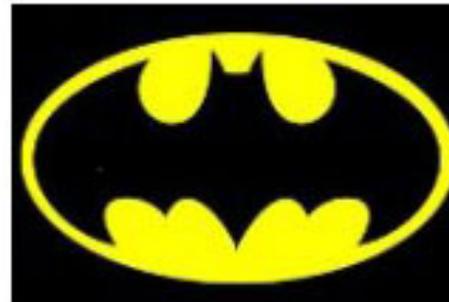
Fourth Class, trademarks/ copyright/internet

- Review and discuss homework due
- Trademarks, definition
- How registered/length of trademarks
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Trademark Notification Symbols



Trademark symbols



Fifth Class, Copyright/internet

- Review
- Peer to peer file sharing
- Two proposed laws in the U.S.
 - 1. Stop Online Piracy Act
 - 2. OPEN Act



Sixth Class, Review Exercise

- Name of program
- Logo
- Music choices
- Advertising
- Re-broadcasting
- Using clips from other sources
- Fair Use
- Photos of copyrighted art
- Ownership of broadcast
- Use Creative Commons

Final Exam follows, at end of
sixth class