EUROPEAN UNION COPYRIGHT LAW

COURSE INFORMATION

Faculty: Dr. João Pedro Quintais | Tito Rendas

Academic Year: 2019/2020 | 2nd Semester | Elective Course

Teaching Hours: 20 | 4 ECTS

Teaching Method: Theoretical-Practical Classes

LEARNING OBJECTIVES

The fundamental objective of this course is to lead students to acquire in-depth knowledge and comprehension of the protection of copyright at the EU level, including the ability to apply, analyse, synthetise, and evaluate the relevant materials. For that purpose, we will examine different European instruments in the field of copyright law, as well as the relevant case law of the CJEU (and, occasionally, of Member States and US courts). These materials will be discussed against the background of one fundamental question: whether EU copyright law, as it is currently designed, is capable of adapting to a rapidly changing social, economic and technological environment. Moreover, students will be asked to critically assess the recently adopted Directive on copyright in the Digital Single Market.

PROGRAM CONTENTS

Part I – Introduction

1. Intellectual property and copyright law
2. General overview of copyright law
3. Rationales of copyright protection

4. Systems of copyright law:
    a. *Droit d'auteur* (civil law)
    b. Copyright (common law)
5. The international framework of copyright law
    a. Berne Convention
    b. TRIPS Agreement
    c. WIPO Treaties

Part II – EU Copyright Law

6. The harmonization process and the EU copyright *acquis*
7. Subject matter
    a. Literary and artistic works
    b. The idea-expression dichotomy
    c. Originality
8. Economic rights
    a. Reproduction
    b. Communication to the public (offline and online)
    c. Distribution (and exhaustion)
9. Exceptions and Limitations
    a. Temporary reproduction
    b. Private copying
    c. Quotation and reporting of current events
    d. Parody
    e. US fair use
10. Enforcement

Part III – EU Copyright Reform

11. The DSM Directive: an overview
12. Case studies
    a. Press publishers' right
    b. Value gap proposal

STATEMENT OF CONSISTENCY BETWEEN THE PROGRAM CONTENTS AND THE COURSE OBJECTIVES

The learning objectives articulated above require students to understand, apply, analyse, and critically evaluate EU copyright law.

In order to achieve these objectives, students must first grasp the key concepts of copyright law, its theoretical underpinnings and different legal traditions, and the basic international legal framework. Part I of the Program provides students with these building blocks.

With the groundwork in place, students will be prepared to go into EU copyright law in depth. Accordingly, Part II maps out the main areas of the copyright *acquis* and its fundamental legal doctrines and problems. Students' comprehension and application of the relevant materials, as well as their analytical skills, will be stimulated and tested through the discussion of scholarly articles, legislation and selected judicial decisions on each of the topics identified in the program.

Finally, Part III focuses on the development of students' capacity of synthesis and evaluation, by discussing the recent process of EU copyright reform.

TEACHING METHOD AND ASSESSMENT

Teaching will consist of a combination of lecturing and the Socratic method. For the most part, we will engage in argumentative dialogue with students, aimed at stimulating critical thinking and drawing out ideas and their underlying assumptions. The quality of the classes will therefore be a function of the commitment of enrolled students, who will be expected to read the assigned materials prior to classes and discuss them with rigor.

The students' final grade will be based on two elements: a take-home exam (80%), and class participation (20%).

STATEMENT OF CONSISTENCY BETWEEN THE TEACHING METHODS AND THE COURSE OBJECTIVES

In the first part of the course - the goal of which is to provide students with basic knowledge about copyright law and comprehension of its fundamental concepts - preference will be given to a more expository approach consistent with the lecturing

method. From then on, we will combine lecturing with a dialogical approach, focusing on students' capacity to examine the statutory texts in connection with judicial interpretation, and their ability to evaluate problems posed to copyright law by developments in technology, social norms, and business models.

Whereas the lecturing method allows us to give students the necessary tools to understand, analyse and apply the relevant materials, the Socratic one, though certainly more demanding for everyone in the classroom, stimulates the students' capacity for critical thinking, problem-solving, and deeper understanding.

LESSONS' PLAN

Prof. João Pedro Quintas

Class #1 (March 9, 15h30-16h45)

1. Intellectual property and copyright law
2. General overview of copyright law

Readings:

- WIPO Intellectual Property Handbook, Chapter 1 (pp 3-4) and Chapter 2 (pp. 40-52)
- P. Goldstein & P.B. Hugenholtz, *International Copyright: Principles, Law, and Practice*, Chapter 1, pp. 3–12
- J. Pila & P. Torremans, *European Intellectual Property Law*, OUP, Chapter 1, pp. 1-14

Class #2 (March 9, 17h00-18h15)

3. Rationales of copyright protection
4. Systems of copyright law: civil law vs. common law
5. The international framework of copyright law

Readings:

- Paul Goldstein & Bernt Hugenholtz, *International Copyright: Principles, Law,*

and Practice, Chapter 2, pp. 13-26, and Chapter 3, only pp. 29-44

- WIPO, *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*, and *Summary of the WIPO Copyright Treaty (WCT) (1996)*
- William Fisher, *Theories of Intellectual Property*, pp. 1-8

Additional readings (optional):

- Robert P. Merges, *Justifying Intellectual Property*, Chapter 1, Harvard University Press, 2011, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924567
- Merges, Robert P., What Kind of Rights Are Intellectual Property Rights? (March 17, 2017). Oxford Handbook of IP Law (R. Dreyfuss and J. Pila, eds.), Forthcoming; UC Berkeley Public Law Research Paper. Available at SSRN: https://ssrn.com/abstract=2959073

Class #3 (March 10, 15h30-16h45)

6. The harmonization process and the EU copyright *acquis*

Readings:

- European Commission, Digital Single Market, *The EU Copyright Legislation*
- European Commission, Digital Single Market, Copyright, https://ec.europa.eu/digital-single-market/en/copyright
- A. Ramalho, *Section 5: Intellectual Property* (December 1, 2015). in F. Amtenbrink et al. (Eds.), Law of the European Union, KLI (2016, Forthcoming), pp. 8, 16-20
- P.B. Hugenholtz, Monash University L. R. vol. 38, No. 1 (2012), *Harmonisation or Unification of European Union Copyright Law*

Class #4 (March 10, 17h00-18h15)

7. Subject matter

Legislation:

- Berne Convention, Article 2(1); TRIPS Agreement, Articles 9 and 10; WCT, Articles 1(4), 2, 4, and 5; InfoSoc Directive, Articles 2 to 4; Term Directive, Article 1(1) and 6; Software Directive, Article 1; Database Directive, Article 3

Case law:

- C-5/08, *Infopaq*, paras 1-26, 30-51
- Joined Cases C-403/08 and C-429/08, *Murphy/Premier League*, paras 1-2, 30-48, 147-159
- C- 310/17, *Levola Hengelo* (entire case)
- C-683/17, *Cofemel* (entire case)

Additional readings (optional):

- Eugenie Coche, 'Hommage au fromage' or how the CJEU said farewell to Heks'nkaas by excluding copyright protection for works of taste, Kluwer Copyright Blog (5 December 2018);
- Estelle Derclaye, CJEU decides that the originality level is the same for all copyright works, including works of applied art, Kluwer Copyright Blog (18 September 2019)

Class #5 (March 11, 15h30-16h45)

7. Subject matter (cont'd)

Legislation:

- *See Class #4*

Case law:

- C-145/10, *Painer*, paras 1-2, 15-19, 27-43, and 85-99
- *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)

Additional readings (optional):

- E. Judge & D. Gervais, *Of Silos and Constellations: Comparing Notions of Originality in Copyright Law*. Cardozo Arts & Entertainment Law Journal, Vol. 27, 2010
- Thomas Margoni, The Harmonisation of EU Copyright Law: The Originality Standard (June 29, 2016). Available at SSRN: https://ssrn.com/abstract=2802327 or http://dx.doi.org/10.2139/ssrn.2802327

Class #6 (March 11, 17h00-18h15)

8. Economic rights (reproduction and communication to the public)

Legislation:

- Berne Convention, Article 9; WCT, Article 8; InfoSoc Directive, Articles 2 and 3, and Recitals 21-27

Case law:

- C-5/08, *Infopaq*, paras 1-26, 30-51
- C-419/13, *Arts & Allposters*, paras 14-21, 24-27, 41-49
- Case C- 476/17, *Pelham,* paras 1-39
- C-306/05, *SGAE*, paras 1-2, 20-23, 32-54
- C-117/15, *Reha Training*, paras 1-2, 11-65

Class #7 (March 12, 15h30-16h45)

8. Economic rights (online communication to the public)

Legislation:

- *See Class #6*

Case law:

- C-607/11, *ITV Broadcasting* (entire case)
- C-466/12, *Svensson* (entire case)
- C-160/15, *GS Media* (entire case)
- C-527/15, *Filmspeler*, paras 1-2, 14-53.
- C-610/15, *The Pirate Bay* (entire case)
- C-161/17, *Renckhoff* (entire case)

Additional readings (optional):

- M. Senftleben, *Copyright Reform, GS Media and Innovation Climate in the EU – Euphonious Chord or Dissonant Cacophony?* Tijdschrift voor auteurs-, media- en informatierecht 2016, pp. 130-133
- T. Rendas, *How Playboy Photos Compromised EU Copyright Law: The GS Media Judgment*. 20(11) Journal of Internet Law 11 (2017)

- JP Quintais, *Untangling the hyperlinking web: In search of the online right of communication to the public*, Journal of World Intellectual Property Law 2018; 21:385–420. https://doi.org/10.1111/jwip.12107 or https://ssrn.com/abstract=3199733

Class #8 (March 12, 17h00-18h15)

8. Economic rights (distribution)

Legislation:

- WCT, Article 6; InfoSoc Directive, Article 4 and Recitals 28-29

Case law

- C-479/04, *Laserdisken*, paras 1-27.
- C-516/13, *Dimensione Direct Sales* (entire case)
- Opinion of AG Szpunar (10 September 2019) in C-263/18, *Tom Kabinet*
- C-128/11, *UsedSoft,* paras 1-2, 20-88
- C- 572/17, *Syed* (entire case)

Additional readings (optional):

- Tomasz Targosz, Welcome to the Brave Old World – UsedSoft and the 'Full' Online Exhaustion Kluwer Copyright Blog (5 July 5 2012);
- 3 posts by Caterina Sganga on *Tom Kabinet* in the Kluwer Copyright Blog, http://copyrightblog.kluweriplaw.com/author/caterinasganga1/

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Class #9 (March 16, 15:30-16:45)

9. Exceptions (temporary reproduction)

Legislation:

- InfoSoc Directive, Article 5(1) and 5(5)

Case law:

- C-302/10, *Infopaq II*, paras. 8-23
- C-403/08 and C-429/08, *Premier League*, paras. 160-182
- C-360/13, *PRCA*, paras. 7-63
- C-527/15, *Filmspeler*, paras. 14-22, 54-72

Class #10 (March 16, 17:00-18:15)

9. Exceptions (private copying)

Legislation:

- InfoSoc Directive, Recital 35 and Article 5(2)(b) and (5)

Case law:

- C-435/12, *ACI Adam*, paras. 12-58
- C-265/16, *VCAST*, paras 14-18, 30-55
- C-467/08, *Padawan*, paras. 29-63

Additional readings (optional):

- J. Poort & J.P. Quintais, *The Levy Runs Dry: A Legal and Economic Analysis of EU Private Copying Levies*. 4 JIPITEC 205 (2013)
- J.P. Quintais, *Private Copying and Downloading from Unlawful Sources*. 46 IIC 66 (2015)
- J.P. Quintais & T. Rendas, *EU Copyright Law and the Cloud: VCAST and the intersection of private copying and communication to the public*. 13 JIPLP 711 (2018)

Class #11 (March 17, 15:30-16:45)

9. Exceptions (Quotation and reporting of current events)

Legislation:

- InfoSoc Directive, Article 5(3)(d)

Readings:

- C-476/17, *Pelham*, paras. 14-25, 66-74
- C-516/17, *Spiegel Online*, paras. 10-15, 60-95
- C-469/17, *Funke Medien*, paras. 9-15, 55-76

Additional readings (optional):

- T. Rendas, *Advocate General Szpunar in Spiegel Online (or why we need fair use in the EU)*. 14(4) JIPLP 265 (2019)
- 2 posts by B. Jütte & J.P. Quintais on the *Pelham* judgment: http://copyrightblog.kluweriplaw.com/2019/11/06/sample-sample-in-my-song-can-they-tell-where-you-are-from-the-pelham-judgment-part-i/ and http://copyrightblog.kluweriplaw.com/2019/11/19/sample-sample-in-my-song-can-they-tell-where-you-are-from-the-pelham-judgment-part-ii/

Class #12 (March 17, 17:00-18:15)

9. Exceptions (parody)

Legislation

- InfoSoc Directive, Article 5(3)(k)

Case law:

- C-201/13, *Deckmyn*, paras. 7-35
- Cour de Cassation, *Le Point*, No. 18-12718

Additional readings (optional):

- E. Rosati, *Just a laughing matter? Why the decision in* Deckmyn *is broader than parody*. 52 Common Market Law Review 511 (2015)
- B. Spitz, *Copyright case: Le Point, France*. Kluwer Copyright Blog, http://copyrightblog.kluweriplaw.com/2019/10/18/copyright-case-le-point-france/

Class #13 (March 18, 15:30-16:45)

9. Exceptions (US fair use)

Legislation

- Section 107 of the US Copyright Act

Case law:

- *Harper & Row v. Nation Enterprises*, 471 U.S. 539 (1985)
- *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

Class #14 (March 18, 17:00-18:15)

10. Enforcement

Legislation:

- InfoSoc Directive, Article 6 and Article 8
- Enforcement Directive, Article 11 and Article 13

Readings:

- C-355/12, *Nintendo*, paras 9-38
- C-70/10, *Scarlet*, paras. 15-25, 29-54
- C-314/12, *UPC Telekabel Wien*, paras. 11-16, 23-64
- C-149/17, *Bastei Lübbe*, paras. 12-22, 26-56
- C-367/15, *OTK*, paras. 11-33

Additional readings (optional):

- M. Husovec, *Injunctions against Innocent Third Parties: The Case of Website Blocking*. 4 JIPITEC 116 (2013)
- T. Rendas, *Lex Specialis(sima): Videogames and Technological Protection Measures in EU Copyright Law*. 37(1) EIPR 39 (2015)

Class #15 (March 19, 15:30-16:45)

11. The DSM Directive: an overview

Readings:

- Proposal for a Directive on copyright in the Digital Single Market, Explanatory memorandum (pp. 1-10)

Additional Readings (optional):

- Position Statement of the Max Planck Institute for Innovation and Competition on the Proposed Harmonisation of European Copyright Rules
- J.P. Quintais, *The New Copyright in the Digital Single Market Directive: A Critical Look*. EIPR (forthcoming, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3424770

Class #16 (March 19, 17:00-18:15)

12. Case studies

Readings:

- DSM Directive, Article 15
- DSM Directive, Article 17

Additional Readings (optional):

- J.P. Quintais, *The New Copyright Directive: A tour d'horizon – Part II (of press publishers, upload filters and the real value gap)*. Kluwer Copyright Blog - http://copyrightblog.kluweriplaw.com/2019/06/17/the-new-copyright-directive-a-tour-dhorizon-part-ii-of-press-publishers-upload-filters-and-the-real-value-gap/

LEGISLATION

The relevant legislation is listed in the lessons' plan and will be provided to students via the Moodle platform.

SELECTED BIBLIOGRAPHY

The readings for each class - both the mandatory and the optional - are listed in the lessons' plan and will be provided to students via the Moodle platform. Prior knowledge of the basics of European Union law is not necessary, although students may find it

useful at certain moments.