

Table of Contents

| | Page |
|--|-----------|
| PREFACE | V |
| TABLE OF CASES | XVII |
| Chapter 1. Introduction | 1 |
| A. History of Copyright | 1 |
| 1. Early English Copyright | 1 |
| 2. Modern U.S. Copyright | 4 |
| 3. Copyright Today | 5 |
| B. Thinking About Modern U.S. Copyright | 6 |
| 1. Copyright as Economic Incentive | 7 |
| 2. Copyright as Fairness and Justice | 9 |
| 3. Copyright as Legislation | 11 |
| C. Studying Copyright | 12 |
| Chapter 2. Copyrightable Subject Matter | 14 |
| A. Originality | 15 |
| <i>Burrow Giles Lithographic Co. v. Sarony</i> | 15 |
| Notes and Questions | 20 |
| <i>Bleistein v. Donaldson Lithographing Co.</i> | 20 |
| Notes and Questions | 24 |
| Problem | 24 |
| <i>Meshwerks v. Toyota Motor Sales U.S.A.</i> | 25 |
| Notes and Questions | 33 |
| <i>Gracen v. Bradford Exchange</i> | 34 |
| Notes and Questions | 39 |
| B. Originality and Facts | 40 |
| <i>Feist Publications v. Rural Telephone Service Co.</i> | 40 |
| Notes and Questions | 50 |
| <i>CDN v. Kapes</i> | 52 |
| Notes and Questions | 55 |
| <i>Nash v. CBS</i> | 55 |
| Notes and Questions | 58 |
| C. Ideas | 59 |
| <i>Baker v. Selden</i> | 59 |
| Notes and Questions | 62 |
| Problem | 62 |
| <i>Nichols v. Universal Pictures Corp.</i> | 63 |
| Notes and Questions | 68 |
| Problems | 69 |
| <i>Kregos v. Associated Press</i> | 69 |
| Notes and Questions | 76 |
| Problem | 77 |
| <i>Apple Computer v. Franklin Computer Corp.</i> | 79 |
| Notes and Questions | 87 |
| <i>Lotus Development Corp. v. Borland Int'l.</i> | 88 |
| Notes and Questions | 98 |

| | |
|--|------------|
| D. Useful Article Doctrine | 99 |
| <i>Mazer v. Stein</i> | 100 |
| Notes and Questions | 101 |
| <i>Kieselstein-Cord v. Accessories By Pearl</i> | 102 |
| Notes and Questions | 105 |
| <i>Carol Barnhart v. Economy Cover Corp.</i> | 106 |
| Notes and Questions | 109 |
| <i>Brandir Int'l v. Cascade Pacific Lumber Co.</i> | 109 |
| Notes and Questions | 113 |
| E. Fixation | 115 |
| <i>Williams Electronics v. Artic Int'l</i> | 115 |
| Notes and Questions | 118 |
| F. Government Works | 119 |
| Chapter 3. Initial Ownership and Transfer | 120 |
| A. Works Made For Hire | 121 |
| <i>Community For Creative Non-Violence v. Reid</i> | 121 |
| Notes and Questions | 131 |
| <i>Hi-Tech Video Productions v. Capital Cities/ABC</i> | 132 |
| Notes and Questions | 139 |
| <i>Miller v. CP Chemicals</i> | 141 |
| Notes and Questions | 144 |
| <i>Roeslin v. District of Columbia</i> | 144 |
| Notes and Questions | 149 |
| B. Joint Authorship | 149 |
| <i>Erickson v. Trinity Theatre</i> | 149 |
| <i>Gaiman v. McFarlane</i> | 157 |
| Notes and Questions | 161 |
| <i>Aalmuhammed v. Lee</i> | 163 |
| Notes and Questions | 168 |
| Problem | 169 |
| C. Transfer of Copyright..... | 170 |
| 1. Writing Requirement | 170 |
| <i>Effects Associates v. Cohen</i> | 171 |
| Notes and Questions | 175 |
| 2. Interpretation and Drafting | 176 |
| Problem | 177 |
| Chapter 4. Formalities, Duration, Renewal | 179 |
| A. Formalities..... | 179 |
| 1. Publication | 181 |
| <i>Estate of Martin Luther King, Jr. v. CBS</i> | 182 |
| Notes and Questions | 185 |
| 2. Notice | 187 |
| Notes and Questions | 188 |
| 3. Deposit | 189 |
| 4. Registration | 189 |
| B. Duration and Renewal | 190 |
| 1. Duration Policy | 191 |
| <i>Eldred v. Ashcroft</i> | 192 |
| Notes and Questions | 201 |
| 2. Duration Basics | 201 |
| Problems..... | 205 |
| 3. Renewal..... | 206 |
| <i>Fred Fisher Music Co. v. M. Witmark & Sons</i> | 207 |
| Notes and Questions | 211 |

| | |
|---|------------|
| C. Termination | 213 |
| Notes and Questions | 217 |
| <i>Classic Media v. Mewborn</i> | 219 |
| Notes and Questions | 226 |
| Chapter 5. Exclusive Rights and Infringement | 228 |
| A. Basic Infringement: Copying and Improper Appropriation | 229 |
| <i>Arnstein v. Porter</i> | 229 |
| Notes and Questions | 232 |
| 1. Copying | 232 |
| <i>Selle v. Gibb</i> | 233 |
| Notes and Questions | 237 |
| <i>Bright Tunes Music v. Harrisongs Music</i> | 237 |
| Notes and Questions | 240 |
| 2. Improper Appropriation | 241 |
| a. Impression-Oriented and Detail-Oriented Analysis | 241 |
| <i>Roth Greeting Cards v. United Card Co.</i> | 242 |
| Notes and Questions | 247 |
| <i>Satava v. Lowry</i> | 247 |
| Notes and Questions | 252 |
| b. The Ordinary Observer Test and Alternatives | 253 |
| <i>Peter Pan Fabrics v. Martin Weiner Corp.</i> | 253 |
| Notes and Questions | 254 |
| <i>Dawson v. Hinshaw</i> | 255 |
| Notes and Questions | 260 |
| <i>Computer Associates Int'l v. Altai</i> | 261 |
| Notes and Questions | 274 |
| 3. Copying and Sound Recordings | 275 |
| Notes and Questions | 277 |
| B. Derivative Works | 278 |
| <i>Lewis Galoob Toys v. Nintendo of America</i> | 279 |
| <i>Micro Star v. Formgen</i> | 283 |
| Notes and Questions | 287 |
| C. Public Display | 288 |
| D. Public Distribution | 290 |
| 1. First Sale Doctrine | 290 |
| <i>Walt Disney Productions v. Basmajian</i> | 291 |
| Notes and Questions | 293 |
| 2. Importation Rights | 295 |
| <i>Kirtsaeng v. John Wiley & Sons</i> | 296 |
| Notes and Questions | 307 |
| E. Public Performance | 308 |
| <i>Columbia Pictures Industries v. Aveco</i> | 309 |
| <i>Columbia Pictures Indus. v. Professional Real Estate Investors</i> | 312 |
| Notes and Questions | 315 |
| 1. Performance Rights in Sound Recordings | 315 |
| Notes and Questions | 317 |
| 2. Section 110 Limitations on Public Performance Rights | 318 |
| 3. Performing Rights Organizations | 321 |
| F. Compulsory Licensing | 322 |
| Notes and Questions | 323 |

| | |
|--|------------|
| G. Digital Technology and Exclusive Rights | 323 |
| <i>Playboy Enterprises v. Frena</i> | 324 |
| <i>Religious Technology Center v. Netcom</i> | 325 |
| Notes and Questions | 328 |
| <i>Cartoon Network v. CSC Holdings</i> | 328 |
| Notes and Questions | 339 |
| <i>American Broadcasting Companies v. Aereo</i> | 340 |
| Notes and Questions | 351 |
| H. Moral Rights | 353 |
| 1. Generally | 354 |
| <i>Gilliam v. American Broadcasting Co.</i> | 354 |
| Notes and Questions | 359 |
| 2. Visual Artists Rights Act | 361 |
| <i>Martin v. City of Indianapolis</i> | 362 |
| Notes and Questions | 368 |
| Chapter 6. Fair Use and Other Defenses | 370 |
| A. Fair Use | 370 |
| 1. Origins | 370 |
| <i>Folsom v. Marsh</i> | 371 |
| Notes and Questions | 374 |
| 2. Criticism, Comment, News Reporting, Education | 375 |
| <i>Harper & Row Publishers v. Nation Enterprises</i> | 376 |
| Notes and Questions | 385 |
| Problem | 386 |
| <i>New Era Publications v. Carol Publishing Group</i> | 386 |
| Notes and Questions | 390 |
| 3. Parody and Transformative Uses | 391 |
| <i>Campbell v. Acuff-Rose Music</i> | 391 |
| Notes and Questions | 401 |
| <i>Rogers v. Koons</i> | 402 |
| Notes and Questions | 410 |
| Problem | 412 |
| 4. Duplication of Copyrighted Works | 413 |
| <i>Sony v. Universal City Studios</i> | 413 |
| Notes and Questions | 420 |
| <i>American Geophysical Union v. Texaco</i> | 422 |
| Notes and Questions | 433 |
| 5. Aggregative Uses | 435 |
| <i>Bill Graham Archives v. Dorling Kindersley Ltd.</i> | 435 |
| Notes and Questions | 440 |
| Problem | 441 |
| <i>Authors Guild v. Google</i> | 442 |
| Notes and Questions | 452 |
| 6. Interoperability | 455 |
| <i>Sega Enterprises v. Accolade</i> | 455 |
| Notes and Questions | 463 |
| B. First Amendment | 464 |
| <i>Eldred v. Ashcroft</i> | 465 |
| Notes and Questions | 466 |
| C. Copyright Misuse | 467 |
| Notes and Questions | 468 |
| D. Other Defenses | 469 |
| 1. Abandonment | 470 |
| 2. Statute of Limitations | 470 |
| 3. Fraud on the Copyright Office | 471 |

| | |
|--|------------|
| Chapter 7. Third Party Liability | 472 |
| A. Vicarious Liability | 473 |
| <i>Shapiro, Bernstein & Co. v. H. L. Green Co.</i> | 473 |
| Notes and Questions | 477 |
| <i>Polygram International Publishing v. Nevada/Tig</i> | 477 |
| Notes and Questions | 484 |
| B. Contributory Liability | 485 |
| <i>A & M Records v. Abdallah</i> | 485 |
| Notes and Questions | 488 |
| <i>UMG Recordings v. Sinnott</i> | 489 |
| Notes and Questions | 493 |
| C. Modern Technology and Third Party Liability | 494 |
| <i>Sony Corporation of America v. Universal City Studios</i> | 495 |
| Notes and Questions | 501 |
| <i>Metro-Goldwyn-Mayer Studios v. Grokster</i> | 503 |
| Notes and Questions | 520 |
| <i>Perfect 10 v. Visa International Service Association</i> | 521 |
| Notes and Questions | 533 |
| Problem | 535 |
| D. Digital Millennium Copyright Act and Internet Service Provider Liability | 535 |
| <i>Viacom v. YouTube</i> | 540 |
| Notes and Questions | 549 |
| Chapter 8. Anti-Circumvention and Anti-Trafficking | 553 |
| A. Background..... | 553 |
| 1. The Digital Challenge | 553 |
| 2. Digital Rights Management Technologies | 554 |
| B. The Digital Millennium Copyright Act | 556 |
| 1. Anti-Circumvention..... | 556 |
| Notes and Questions | 559 |
| 2. Anti-Trafficking | 560 |
| <i>Universal City Studios v. Reimerdes</i> | 562 |
| Notes and Questions | 570 |
| Problem | 572 |
| <i>Chamberlain Group v. Skylink Technologies</i> | 572 |
| Notes and Questions | 580 |
| <i>MDY Industries v. Blizzard Entertainment</i> | 581 |
| Notes and Questions | 590 |
| 3. Copyright Management Information | 590 |
| Chapter 9. Remedies | 592 |
| A. Injunctive Relief | 593 |
| 1. Permanent Injunctions | 593 |
| <i>Metro-Goldwyn-Mayer Studios v. Grokster</i> | 593 |
| Notes and Questions | 600 |
| Problem | 603 |
| 2. Preliminary Injunctions | 603 |
| Notes and Questions | 604 |
| 3. Impoundment and Destruction | 604 |

| | |
|---|------------|
| B. Damages..... | 605 |
| 1. Actual Damages and Profits..... | 605 |
| <i>Frank Music Corp. v. Metro-Goldwyn-Mayer</i> | 606 |
| Notes and Questions..... | 609 |
| Problem..... | 611 |
| 2. Statutory Damages..... | 611 |
| <i>Columbia Pictures Television v. Krypton Broadcasting</i> | 612 |
| Notes and Questions..... | 614 |
| C. Costs and Attorneys Fees..... | 616 |
| Notes and Questions..... | 617 |
| D. Criminal Penalties..... | 617 |
| Notes and Questions..... | 618 |
| | |
| Chapter 10. State Law and Preemption..... | 619 |
| A. Preemption Overview..... | 619 |
| 1. Background..... | 619 |
| 2. Constitutional Preemption..... | 620 |
| 3. Statutory Preemption..... | 621 |
| B. State Law Causes of Action..... | 622 |
| 1. Misappropriation..... | 622 |
| <i>International News Service v. Associated Press</i> | 622 |
| Notes and Questions..... | 629 |
| <i>National Basketball Association v. Motorola</i> | 629 |
| Notes and Questions..... | 636 |
| 2. Contract Law..... | 637 |
| <i>ProCD v. Zeidenberg</i> | 638 |
| Notes and Questions..... | 644 |
| <i>Bowers v. Baystate Technologies</i> | 646 |
| Notes and Questions..... | 649 |
| 3. Right of Publicity..... | 649 |
| <i>Laws v. Sony Music Entertainment</i> | 649 |
| Notes and Questions..... | 657 |
| | |
| Chapter 11. International Copyright Law..... | 659 |
| A. Treaties..... | 660 |
| 1. Berne Convention..... | 660 |
| Notes and Questions..... | 662 |
| 2. GATT-TRIPS and NAFTA..... | 662 |
| Notes and Questions..... | 663 |
| B. Enforcement..... | 663 |
| 1. Cross-Border Enforcement..... | 664 |
| <i>Subafilms v. MGM Pathe Communications</i> | 664 |
| Notes and Questions..... | 669 |
| Problem..... | 670 |
| 2. Choice of Law..... | 671 |
| <i>Itar-Tass Russian News Agency v. Russian Kurier</i> | 671 |
| Notes and Questions..... | 674 |
| | |
| INDEX..... | 677 |