

Anatomy of a Deal – Technology Meets New Media INTL190 – D00

Spring 2020, UCSD

Instructor: Bradford Auerbach

Thursdays 3-5.50pm Pacific Time

Office hours: Thursdays 2-3pm Pacific Time.

This course will examine the issues that permeate the current technology and media landscape. As a means to reveal the ongoing challenges in this landscape, we will examine three industries that have undergone tectonic changes over the last few decades: video, music and computer. It is at the intersection of these industries that some of the most intriguing developments and hence the most innovative deals are being made. After establishing an understanding of these evolving issues, we will review the provisions generally encountered in negotiating a deal involving emerging technology and traditional entertainment media. The basic fundamentals of copyright and contract law will be introduced to ensure a foundation for the exploration of new technology business development and contract formation. We will analyze several of these issues through an international lens, to examine nuances particular to certain territories.

Requirements: This is a research seminar for which each of you is required to choose a topic based on your particular interest in technology and/or media. On the schedule that follows, you will find due dates for a declaration of topic, outline and bibliography, individual appointment to discuss your essay, and draft paragraphs. On the last day of class, each of you will be required to present your research topic to the seminar. Your final essay will be approximately 12-15 pages in length and will be turned in both to turnitin.com and, in hard copy, to me. All cases of suspected plagiarism will be forwarded to the Office of Academic Integrity.

Each of you will also be asked to commit to leading one week's discussion on the assigned reading. You will work, most likely, in teams of two or three. You may present together or choose to divide up the readings. You will submit to me a write up about the presentation several days before the day of your assigned session.

I consider class participation important practice for fielding questions from supervisors, clients and colleagues. I encourage you to take the time you need to reflect while answering, and to ask for

clarification as needed. I may distribute topical questions several days in advance of a session, for which you should be prepared as I will be cold calling on you during the class. Asking questions indicates to me your inquisitiveness and involvement. Further, I believe there is no such thing as a dumb question. You will note that class participation is an integral part of your final grade. Determination of participation points earned is within the subjective discretion of the instructor and will be based on the quality of participation, not on mere quantity. Students who engage in negative participation (for instance, side conversations while the instructor or another student is speaking) will have participation points deducted.

Seminars work only when participants show up having done the reading, thought about the issues, and are prepared to discuss both the details and the underlying arguments. Seminars live and die on the basis of participation; therefore, you will only be allowed to use computers to connect to the class. You will note there is no final exam, so traditional note taking is not relevant in this seminar. There is very little on which I will be lecturing that needs to be transcribed into notes. I recognize that you may want to make notes that are relevant to your research topic.

Again, note that class participation is an important component of your grade. Between me cold calling you and you offering up salient questions and comments, you will be able to build valuable points by thoughtful class participation.

Finally, you cannot pass the class unless you do **all** of the work.

Grading:

- Class Participation: 20 points
- Topic declaration, outline, bibliography, and draft paragraphs: 5 points each/20 points total
- Discussion and Presentation of Weekly Reading: 5 points
- Presentation of Final Paper: 15 points
- Final Research Paper: 40 points

Required reading: Two books must be purchased, and should be read steadily through the quarter. The first underpins much of our weekly discussions and the second will assist you in preparing your research paper. All other material should be available in Canvas or online. If the links have become broken, you should be resourceful, connect with the library and finally let me know.

- Krueger, Rockonomics: A Backstage Tour of What the Music Industry Can Teach Us about Economics and Life (Currency, 2019)
- Kate Turabian, et al, A Manual for Writers of Research Papers, Theses and Dissertations (University of Chicago Press, 8th or 9th Edition).
- Selected court decisions.
- The Copyright Office maintains a current version of the Copyright Act at <http://www.copyright.gov/title17/>.
- Barlow, “The Economy of Ideas”
<https://homes.eff.org/~barlow/EconomyOfIdeas.html>
- Isaacson, Steve Jobs chapters 30-34 (Simon & Schuster).
- Kelly, The Inevitable chapter 3 (Viking).
- Various selected online articles, as shown below.
- During the quarter I will be distributing current articles that will also become part of our class discussion.

The schedule for the course; come prepared to discuss the readings for each class.

SECTION ONE – VIDEO INDUSTRY

1. Thursday April 2 Introduction: From the Bijou to Betamax: how the film studios and networks grappled with new technology, life used to be so simple.
 - An overview of technology development and media distribution.
 - Readings: [Sony Corp. of America v. Universal City Studios, Inc.](#), 464 U.S. 417 (1984)
2. 4/9 From VHS to Netflix to Aereo: how the studios and networks finally learned to stop fearing new technology and learned to love the internet.
 - [American Broadcasting Companies v. Aereo](#), 573 U.S. ____ (2014).

- <https://www.nytimes.com/2019/03/14/arts/television/one-day-at-a-time-canceled-netflix.html>
- <https://www.nytimes.com/2019/02/17/business/media/netflix-movies-oscar.html>
- Streaming Wars: <https://bit.ly/2WGHj9r>
- *DUE: Two paragraph statement of your intended research; due electronically to Turnitin.*

SECTION TWO – MUSIC INDUSTRY

3. 4/16 From piano rolls to vinyl: how the music business began grappling with new technology.
 - Krueger, chapters 1-3
 - The new dynamics in the land of nearly free
<https://www.linkedin.com/pulse/less-money-mo-music-lots-problems-look-biz-jason-hirschhorn>
 - <https://www.musicbusinessworldwide.com/us-recorded-music-market-generated-8-7bn-last-year-up-1-2bn-on-2016/>
 - <https://www.cnet.com/news/us-music-fans-throw-more-money-at-vinyl-and-cds-than-itunes-downloads-now/>
4. 4/23 Is the record business in the wine or the bottling business, or what happened to CDs in the age of Spotify.
 - Krueger, chapters 3-6
 - Barlow, “The Economy of Ideas” and <http://davidbyrne.com/how-will-the-wolf-survive-can-musicians-make-a-living-in-the-streaming-era>
 - If streaming is the new business model, why are CDs still selling so well in Japan?
http://www.nytimes.com/2014/09/17/business/media/cd-loving-japan-resists-move-to-digital-music-.html?_r=0
 - *DUE: Outline of research project.*

SECTION THREE – COMPUTER INDUSTRY

5. 4/30 From Alan Turing to Steve Jobs: is it always the shiniest technology that wins in the marketplace?
 - Isaacson, chapters 30-34
 - Kelly, chapter 3
 - What factors in Scandinavia contributed to the launch and early success of Spotify there?
<http://www.economist.com/news/leaders/21571136-politicians->

[both-right-and-left-could-learn-nordic-countries-next-supermodel](#)

6. 5/7 Technology shapes how the artist creates: from the album format to MP3 and EDM, from the Bijou to You Tube. “Good artists copy, great artists steal” according to Picasso and Bono. Is it all really just the Lawyers’ Full Employment Act?
 - <http://www.npr.org/programs/ted-radio-hour/321797073/what-is-original>
 - <http://ultimateclassicrock.com/metallica-napster-lawsuit/>
 - <https://medium.com/@norafrancescagermain/you-have-no-idea-how-f-d-streaming-is-afabc7706e65>
 - http://www.nytimes.com/2016/12/13/opinion/forget-att-the-real-monopolies-are-google-and-facebook.html?_r=0
 - *DUE: Bibliography*

SECTION FOUR – COPYRIGHT & CONTRACTS

7. 5/14 Intellectual Property Law 101: the basics of copyright, trademark and patent law; and how bands with money wield clout in the marketplace.
 - Krueger, chapters 7-9
 - <https://www.wired.com/1995/01/negativland/> [U2 vs. Negativland]
 - Readings:
 - <http://www.forbes.com/sites/robertwood/2015/03/11/pharrell-williams-robin-thicke-lose-7-4m-verdict-for-marvin-gaye-song-theft-before-taxes/> [Marvin Gaye vs Pharrell, Robin Thicke]
 - <https://www.nytimes.com/2018/03/21/business/media/blurred-lines-marvin-gaye-copyright.html> [Marvin Gaye vs Pharrell, Robin Thicke]
 - <http://www.rollingstone.com/music/lists/songs-on-trial-10-landmark-music-copyright-cases-20160608/robin-thicke-vs-marvin-gaye-2014-20160608>
 - *DUE: Drafts - introductory paragraph and minimum four body paragraphs; due electronically to Turnitin*
8. 5/21 Fair Use and the Marketplace
 - Krueger, chapters 10-11
 - ['Star Trek'/Dr. Seuss Mashup Deemed Copyright Fair Use by Judge](#)
 - How the well-intentioned DMCA has caused unforeseen headaches, and how reforming it may be the answer to seemingly

ineffective antitrust approaches to UGC-centric platforms like YouTube and Facebook.

<https://www.theverge.com/2020/2/13/21133754/congress-dmca-copyright-reform-hearing-tillis-coons-big-tech>

- When Your Custom T-Shirt Is a Copyright Violation: Print-on-demand companies allow anyone to upload designs for T-shirts, mugs, and other items. But many images violate intellectual property rights. <https://www.wired.com/story/freewheeling-copyright-infringing-world-custom-printed-tees/>

9. 5/28 Contract Law 101: the basics of a deal – you gotta know the territory. Copyright, technology and contract law in the real world - new technology contract provisions: advance, guarantee, royalty, marketing spend, piracy protection.

- Readings: <http://www.businesslawbasics.com/chapter-18-contract-law>
- Readings: Form contract to be distributed.
- Readings: <https://www.smashingmagazine.com/2017/12/designers-copyright-law-essentials/>
- <https://www.rollingstone.com/music/music-news/bob-dylan-accused-of-plagiarizing-nobel-lecture-from-sparknotes-198150/>

10.6/4 Last meeting: presentations.

Final papers are due Monday 6/8/2020 at 11am electronically to Turnitin.

Please submit all assignments in the following format, with the five items in the upper left hand of the page:

Name

INTL 190 – D00

Date

Assignment Description

Brief Statement of Your Research Thesis

Please number every page.

Students agree that by taking this course all required papers will be subject to

submission for textual similarity review to Turnitin.com for the detection of plagiarism. All submitted papers will be included as source documents in the Turnitin.com reference database solely for the purpose of detecting plagiarism of such papers. Use of the Turnitin.com service is subject to the terms of use agreement posted on the Turnitin.com site. All cases of plagiarism and cheating will be referred to the office of academic integrity.

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Similarly, you own the copyright in your original papers and exam essays. If we are interested in posting your answers or papers on the course web site, we will ask for your written permission.

Topics of likely additional discussion during the quarter:

- Technology seeks to convince Hollywood that its new widget will expand distribution.
- Hollywood does not like other companies growing on the back of Hollywood's intellectual property.
- Look at historical examples of what worked, what did not and why.
- How do these deals get made, what is the usual process.

- Who does business development, business affairs, legal affairs?
- Who fears what in doing these deals.
- What role is played by major film studios, independents, cable companies, satellite companies, record labels, music publishers, Screen Actors Guild, talent agencies, ad agencies, merchandise companies, managers, authors, directors, musicians, celebrities?
- What form do deals take in the new media landscape: distribution, license, co-venture, etc.
- What are the key provisions of such deals: advance, guarantee, royalty, marketing spend, piracy protection.
- What are the hidden landmines in doing new technology deals?
- Once the deal is done, what happens next?
- How does the marketplace react, and how can the parties shape the marketplace reaction?
- What are the platforms that can be leveraged: web, mobile, broadcast, cable.
- What are these companies up to: Netflix, Google, Spotify, Amazon, HBO, Sony, HP, Apple, Live Nation?
- What is the difference between virtual reality and augmented reality? Will VR or AR follow the same path as 3D TV?