

## **Anatomy of a Deal – Technology Meets New Media**

Instructor: Bradford Auerbach

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 an 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 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. You may present together or choose to divide up the readings. You will submit a one page write up about the presentation on or 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.

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 be allowed to use computers for a portion of the class unless it becomes apparent that any one of you is using it for purposes other than note taking. After that, we go old school and put away all digital devices.

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

### **Grading:**

- Participation: 15 pts
- Discussion/Presentation: 20 pts
- Topic declaration, outline and bibliography, and draft paragraphs: 5pts each/15 pts total
- Final Essay: 50 pts

**Required reading:** the first two books must be purchased -

- Coleman, Playback (DeCapo/Penguin, 2005).
- Kate Turabian, et al, A Manual for Writers of Research Papers, Theses and Dissertations, University of Chicago Press, 8th 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).
- Several selected online essays.

## **The schedule for the course:**

### SECTION ONE – VIDEO INDUSTRY

1. Monday March 28 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: Coleman, chapters 1-4.
  - Readings: *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984)
2. Monday April 4 From VHS to Netflix to Aero: 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).
  - Why looking to Korea helps predict the technology / media future: <http://www.bbc.com/news/magazine-31130947>
  - *DUE: Two paragraph statement of your intended research; hard copy due at beginning of class and electronically to Turnitin*

### SECTION TWO – MUSIC INDUSTRY

3. Monday April 11 From piano rolls to vinyl: how the music business began grappling with new technology.
  - Readings: Coleman, chapters 5-9.
4. Monday April 18 Is the record business in the wine or the bottling business, or what happened to CDs in the age of

Spotify.

- Readings: 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](http://www.nytimes.com/2014/09/17/business/media/cd-loving-japan-resists-move-to-digital-music-.html?_r=0)
- The new dynamics in the land of nearly free  
<https://www.linkedin.com/pulse/less-money-mo-music-lots-problems-look-biz-jason-hirschhorn>
- *DUE: Outline of essay.*

### SECTION THREE – COMPUTER INDUSTRY

5. Monday April 25 From Alan Turing to Steve Jobs: is it always the shiniest technology that wins in the marketplace?
  - Readings: Isaacson, chapters 30-34.
  - 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>
  - *DUE: Bibliography*
6. Monday May 2 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/>
  - *DUE: Introductory paragraph, minimum four body paragraphs; hard copy due at beginning of class and electronically to Turnitin*

## SECTION FOUR – COPYRIGHT & CONTRACTS

7. Monday May 9 Intellectual Property Law 101: the basics of copyright, trademark and patent law; and how bands with money wield clout in the marketplace.
  - Readings: <http://www.seanet.com/~rod/cannibal.html> [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]
8. Monday May 16 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: <http://stories.gettyimages.com/copyright-essentials/>
  - It said that Ireland saved culture during the Dark Ages, why is Ireland today such a haven for multinational technology companies like Apple, Amazon, Google, eBay, and myriad others?  
<http://www.npr.org/sections/parallels/2014/12/08/368770530/u-s-tech-firms-see-green-as-they-set-up-shop-in-low-tax-ireland>
9. Monday May 23 Last meeting: presentations

*Final papers are due June 6 at NOON; hard copy due at my office and electronically to Turnitin*

Topics of likely 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, 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?

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.