

INTELLECTUAL PROPERTY WEBINAR
MARCH 24, 2020 – 9:00 A.M. – NOON
VIDEO CONFERENCE ONLY

AGENDA

Copyrights for Attorneys: What You Need to Know
Marian Armour-Gemman, WVU Trademark Librarian

Intellectual Property Panel Discussion
Mikal-Ellen Suzuki Bennett; Robert Bandy; Kevin Levine

Getting Registered as a Patent Attorney with the USPTO
Mikal-Ellen Suzuki Bennett, Registered Patent Attorney

Copyright for Consumers and their Attorneys

Marian Armour-Gemmen

West Virginia University Libraries

24 March 2020

West Virginia State Bar



Outline

- What is Copyright
- Copyright Coverage
- Reusing Content
- Copyright Office Webpage
- Fair Use
- Fair Use Review



Types of Intellectual Property

- **Trade Secret**
 - Something which has economic value because it is not generally known or easily discoverable by observation and for which efforts have been made to maintain secrecy
- **Trademarks**
 - A word, name, symbol, or device that is used in trade with goods to indicate the source of goods and to distinguish them from the goods of others.
- **Patents**
 - A property right granted to an inventor to exclude others from making, using, offering for sale, or selling the invention
- **Copyright**
 - A form of protection provided to authors of 'original works of authorship' including literary...and certain other intellectual works, both published and unpublished.



Copyright ©

- “A form of protection provided to authors of ‘original works of authorship’ including literary...and certain other intellectual works, both published and unpublished.”
- Exclusive right to reproduce the copyrighted work, **prepare derivative works**, and to distribute copies (among other things).
- Currently a work does not have to be registered to be protected. But you cannot bring suit unless the work is registered.



Copyright ©

- Copyright protects form of expression rather than the subject matter of the writing.
- For example, a description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making and using the machine.



Three basic requirements to qualify for copyright protection:

- **Original:** independently created (not copied from something else); does not have to be novel, unique, imaginative or inventive
- **Creative:** at least a small amount of creativity (not a list of facts)
- **Fixed:** fixed in a tangible medium of expression



Copyright Covers

1. Literary works (books, magazines, web pages)
2. Musical works (songs, musical plays)
3. Dramatic works (plays, dramatic readings)
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
(paintings, photographs, cartoon characters, maps, technical drawings, boat hull designs)
6. Motion pictures and other audiovisual works
(films, videos, slides)
7. Sound recordings (discs, tapes, records)
8. Architectural works (building design, blueprints)



Copyright Does Not Cover

- Ideas
- Procedures
- Processes
- Systems
- Methods
- Concepts
- Discoveries
- Facts
- Names, Titles, Short Phrases
- Typefaces
- Blank forms
- Familiar Symbols & Designs



More on Copyright

- Protects the expressive content not the underlying thoughts or ideas
- Must have a “spark” of creativity
- Must be a fixed work that you can see or hear.
- It does not need to be permanent, but cannot be short or transitory
- Cannot be an improvised performance that has not been written down or recorded



Copyright ©

- Currently a work does not have to be registered to be protected. But you cannot bring suit unless the work is registered.
- Exclusive right to reproduce the copyrighted work, prepare derivative works, to publically display, and to distribute copies (among other things).



Copyright ©

Term of copyright

For Works Originally Created on or after January 1, 1978:

- Life plus an additional 70 years after the author's death.
- For works made for hire, 95 years from publication or 120 years from creation, whichever is shorter.



Basic Registration Fees

- *Each registration must include a properly completed application form, a nonrefundable filing fee, and a nonreturnable deposit.*
- \$35 Single Application Electronic registration through eCO
- \$55 Standard Application through eCO
- \$85 Registration on Form TX, Form VA, Form PA, Form SE, and Form SR (available by regular mail only)



Review: Three basic requirements to qualify for copyright protection:

- **Original:** independently created (not copied from something else); does not have to be novel, unique, imaginative or inventive
- **Creative:** at least a small amount of creativity (not a list of facts)
- **Fixed:** fixed in a tangible medium of expression



Worksheet: Is this covered by Copyright?



Is It Copyrightable?

- The email you sent to your grandparents.
- Your amazing sunset photo you uploaded to Instagram.
- The idea you verbalized during a Chamber of Commerce brainstorming session.
- The tweet you posted explaining your position on the rising cost of toilet paper.



References:

- Instagram Terms of Use
- <https://about.instagram.com/blog/announcements/instagram-community-terms-of-use-faqs/>
- Works Made for Hire, Circular 9
- <https://www.copyright.gov/circs/circ09.pdf>
- Twitter and Copyright
- https://copyrightalliance.org/ca_faq_post/tweet-protected-copyright/



Reusing Content



Options for reusing content:

1. Get permission from copyright owner
2. Obtain a license
3. Employ Fair Use
4. Use Public Domain content
5. Use publicly-licensed content



Licensing

- Copyright owner gives permission for specific use, for a fee.
- Creative Commons gives open permission to use works without a fee
 - Different levels of CC licenses
<http://creativecommons.org/>



Licenses

Compulsory (copyright holder may not have to be consulted)

- Mechanical License – to record and distribute a song you don't hold the copyright to and isn't in the public domain (Harry Fox Agency)
- Synchronization License – to include music you don't hold the copyright to and isn't in the public domain in an audio-video work
- Public Performance License (ASCAP, BMI, SESAC)



Centralize Permission

- [Copyright Clearance Center](#)
- [Art Resource](#)
- [Bridgeman Images](#)
- [WATCH = Writers Artists and their Copyright Holders](#)



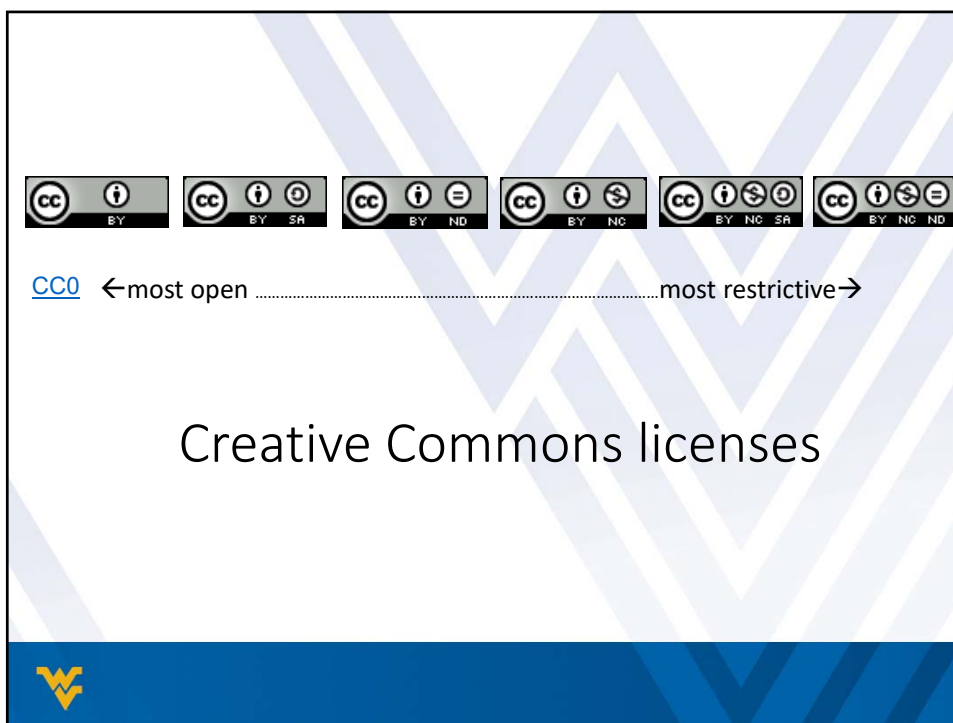
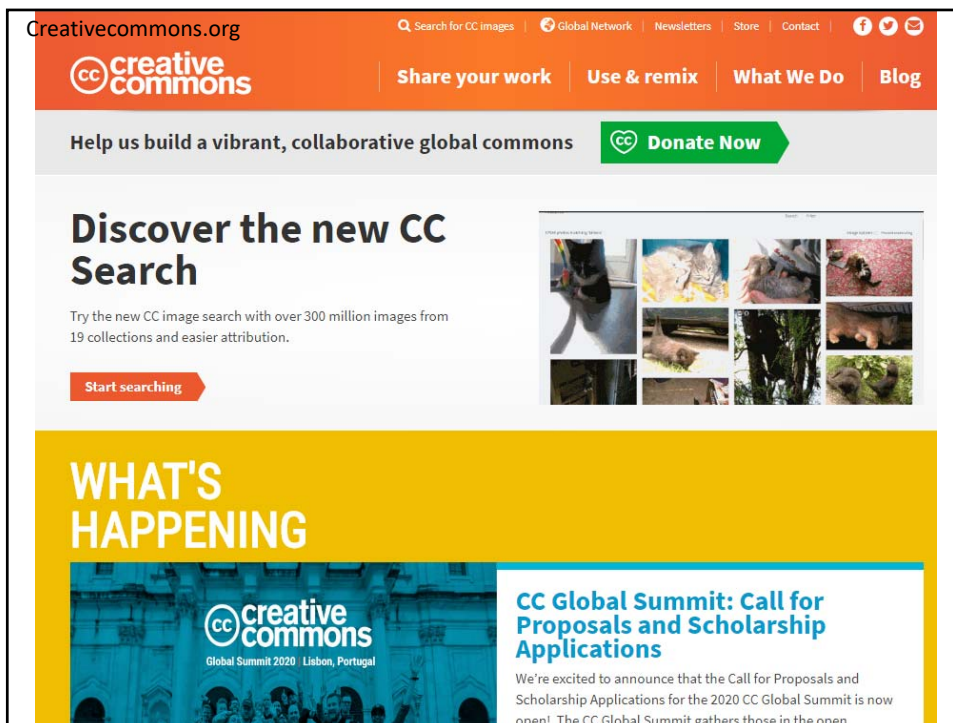
Creative Commons

A non-profit organization.

One of their goals is to: provide [Creative Commons licenses](#) and [public domain tools](#) that give every person and organization in the world a free, simple, and standardized way to grant copyright permissions for creative and academic works; ensure proper attribution; and allow others to copy, distribute, and make use of those works

Creative Commons, “About”





Copyright Office

www.copyright.gov

- U.S. Copyright office is a separate federal department within the Library of Congress, run by the Register of Copyrights.
- Works that are deposited are sent to the Library of Congress for its collections.
- Mission: The U.S. Copyright Office promotes creativity and free expression by administering the nation's copyright laws and by providing impartial expert advice on copyright law and policy for the benefit of all.



Copyright Office Webpage

<https://www.copyright.gov/>



Primary Legal Resources

- Register → Record → Research
- Copyright Law of the U.S. (Title 17)
- Code of Federal Regulations (Title 37, Chapter II)
- Compendium of U.S. Copyright Office Practices
- Fair Use Index
- Archive of Briefs and Legal Opinions



Helpful Items

- Schedule of Fees
- Learning Engine Video Series
- Circulars
- Forms
- Search Copyright Records



Copyright Office <http://www.copyright.gov/>

Register
Register a Copyright

Record
Record a Document

Research
Research and Certification

RESOURCES

- Search Copyright Records**
Search the Copyright Public Records Catalog online, 1978 to present.
- DMCA Designated Agent Directory**
Service Provider Designation of Agent
- Virtual Card Catalog**
Proof of Concept
- Schedule of Fees**
Fees for Registration, Recordation, and Other services
- Archive of Briefs and Legal Opinions**
Legal guidance on questions of copyright law
- Statutory Licensing**
Resources for Music and Audiovisual Statutory Licenses
- Mandatory Deposit**
Frequently Asked Questions about Mandatory Deposit
- Administrative Reports**
Annual Reports » Strategic Plan » IT & Tech Reports

EDUCATION

- Fair Use Index**
A searchable database of court opinions to make the principles and applications of fair use more accessible and understandable
- Frequently Asked Questions**
Answers to common questions about copyright
- History and Education**
Learn about copyright history and search historical documents and publications
- Copyright Events**
Events of the Copyright Office
- Learning Engine Video Series**
Video series that introduces the Copyright Office and copyright concepts

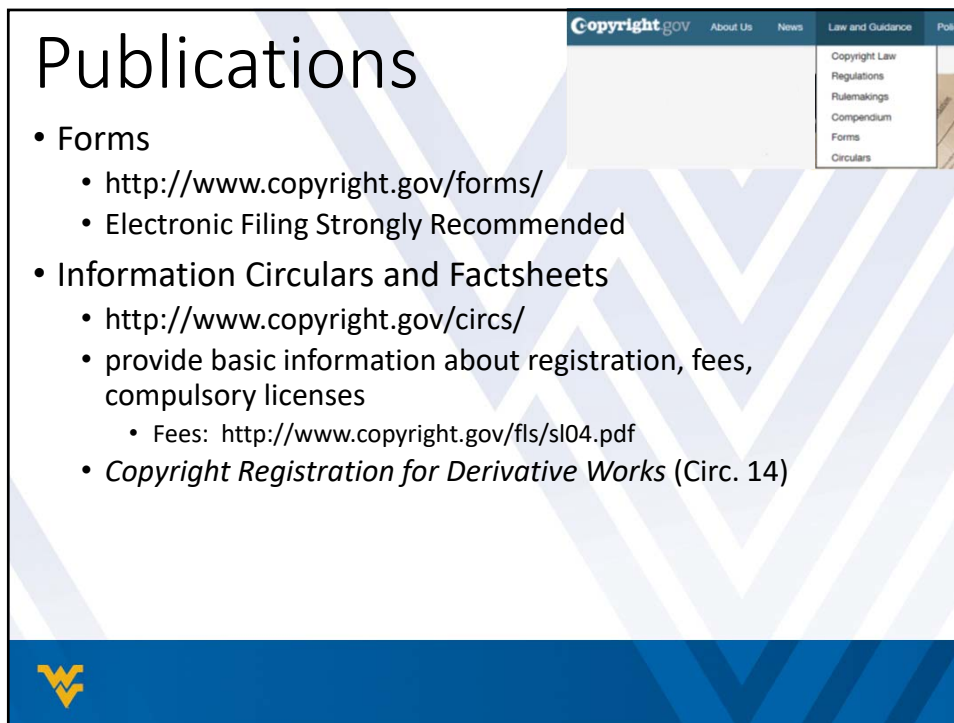
Copyright Quick Links

- Copyright Modernization**
Modernization efforts across the entire Office
- Copyright Law of the U.S.**
Title 17 of the U.S. Code
- Code of Federal Regulations**
Title 37, Chapter II
- Compendium of U.S. Copyright Office Practices**
Third Edition
- Copyright Office Calendar**
Rulemakings, open comments, and events
- Orrin G. Hatch-Bob Goodlatte Music Modernization Act**
Background and Implementation Steps
- Latest News**
Copyright Office Launches New Learning Engine Video Series
Copyright Office Announces Symposium for Unclaimed Royalties Study

POLICY **RULEMAKING**

Law and Guidance

- Copyright Law of the United States
 - <http://www.copyright.gov/title17/>
- Compendium (Rule Book)
- Publications
 - Forms
 - Circulars



The screenshot shows the 'Publications' page on Copyright.gov. The page has a blue header with the Copyright.gov logo and navigation links: 'About Us', 'News', 'Law and Guidance', and 'Policy'. A dropdown menu is open under 'Law and Guidance', listing 'Copyright Law', 'Regulations', 'Rulemakings', 'Compendium', 'Forms', and 'Circulars'. The main content area features a large 'Publications' heading and a list of items:

- Forms
 - <http://www.copyright.gov/forms/>
 - Electronic Filing Strongly Recommended
- Information Circulars and Factsheets
 - <http://www.copyright.gov/circs/>
 - provide basic information about registration, fees, compulsory licenses
 - Fees: <http://www.copyright.gov/fls/sl04.pdf>
 - *Copyright Registration for Derivative Works (Circ. 14)*

The page footer contains the West Virginia state logo.



The screenshot shows the 'Resources' page on Copyright.gov. The page has a blue header with the Copyright.gov logo and navigation links: 'About Us', 'News', 'Law and Guidance', and 'Policy'. A dropdown menu is open under 'Law and Guidance', listing 'Copyright Law', 'Regulations', 'Rulemakings', 'Compendium', 'Forms', and 'Circulars'. The main content area features a large 'Resources' heading and a list of items:

- Search Copyright Records
- Schedule of Fees
- Archive of Briefs & Legal Opinions
- Mandatory Deposit
 - <http://www.copyright.gov/circs/circ07d.pdf>
 - All works are subject to the mandatory deposit provision of the copyright law.
 - Two copies of the best edition must be sent to the Copyright Office within three months of publication.
 - Mandatory deposit applies to foreign works distributed in the United States.

On the right side, there is a 'RESOURCES' sidebar with a search bar and several links:

- Search Copyright Records**
Search the Copyright Public Records Catalog online. 1978 to present.
- DMCA Designated Agent Directory**
Service Provider Designation of Agent
- Virtual Card Catalog**
Proof of Concept
- Schedule of Fees**
Fees for Registration, Recordation, and Other services
- Archive of Briefs and Legal Opinions**
Legal guidance on questions of copyright law
- Statutory Licensing**
Resources for Music and Audiovisual Statutory Licenses
- Mandatory Deposit**
Frequently Asked Questions about Mandatory Deposit
- Administrative Reports**
Annual Reports Strategic Plan IT & Tech Reports

The page footer contains the West Virginia state logo.

Searching Copyrighted Works

Register
Register a Copyright

Record
Record a Document

Research
Research and Certification

Prior to 1978 records only at the Copyright Office

Request search here or visit the office.

Public Catalog
Copyright Catalog (1978 to present)

Catalog of Copyright Entries

Basic Search **Other Search Options**

Search for:

Search by: **Title** (omit initial article A, An, The, El, La, Das etc.)
Names (Crichton Michael, Walt Disney Company)
Keyword
Registration Number (for VAu 598-675 type vau000598675)
Document Number (for V2606 P87 type v2606p087)
Command Keyword

25 records per page

Education

- Fair Use Index

<http://www.copyright.gov/fls/fl102.html>

Or

<https://www.copyright.gov/fair-use/>

- Frequently Asked Questions

EDUCATION

Fair Use Index
A searchable database of court opinions to make the principles and applications of fair use more accessible and understandable

Frequently Asked Questions
Answers to common questions about copyright

History and Education
Learn about copyright history and search historical documents and publications

Copyright Events
Events of the Copyright Office

Learning Engine Video Series
Video series that introduces the Copyright Office and copyright concepts



Fair Use



Fair Use

“A reasonable and limited use of a copyrighted work without the author’s permission, such as quoting from a book in a book review or using parts of it in a parody.”

--Black’s Law Dictionary, 2004.



Fair Use

- Decided on a Case by Case basis
- Basic Concepts
 - No Formula
 - Cannot just declare, I think this is fair use
- Can always ask permission when in doubt
- Copyright Office has a Fair Use Index
 - List of court decisions
 - Can sort by topic



Four Factors for Fair Use

1. the purpose and character of the use
2. the nature of the copyrighted work
3. the amount and substantiality of the portion used
4. the effect of the use upon the potential market for or value of the copyrighted work



Purpose & Character of the Use

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Commentary
- News reporting
- Transformative or productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

- Commercial Activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author
- Non-transformative use, verbatim/exact copy



<https://copyright.columbia.edu/>

Nature of the Copyrighted Work

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives
- Non-consumable work

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction
- Consumable (i.e. workbook, test)
- Work made for the educational market (i.e. casebook)



<https://copyright.columbia.edu/>

Amount of the Portion Used

Favoring Fair Use

- Small portion of work
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to or “heart of the work”



<https://copyright.columbia.edu/>

Effect on the potential market

Favoring Fair Use

- User owns lawfully purchased or acquired copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyright work
- Lack of licensing mechanism

Opposing Fair Use

- Could replace sale of copyright work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Web or in another public forum
- Repeated or long-term use



<https://copyright.columbia.edu/>

Fair Use Review



True or False

- Kathy downloaded a few photos of local organic farms from Flickr.com's Creative Commons (CC) pool. She follows the rules of the photographer's specific CC license and uses them in her digital video about sustainable agriculture. That's OK.
- **True.** *Kathy can legally use the photos as long as she follows the rules of the license.*



True or False

Since Richard forgot to register his screenplay before he sent it out to agents for review, he's no longer eligible to copyright it.



True or False

Sam buys an mp3 from iTunes, then decides he doesn't like it, so he resells the mp3 to his friend.

This is legal, right?



True or False

Biff has designed mugs with a dramatic bridge photograph and plans to sell them to raise money for Engineers without Borders.

The photo came from Getty Images.

Biff isn't worried about the watermark, since he can easily Photoshop that out.

Is this fair use?



True or False

Adam recorded a video for his YouTube channel about the upcoming Senate elections and includes an official photo taken by a government employee and four bills authored by the incumbent that Adam found on the Senate's website.

That's copyright infringement.

False. *Works produced by the U.S. government, or any U.S. government agency, are in the public domain. The texts of legal cases and statutes produced by the federal government are also in the public domain. However, the work needs to be cited.*



True or False

Justin downloaded the black-and-white horror classic *Night of the Living Dead* from the Internet Archive and decided to mix an audio sample from the film into one of his original songs.

That's copyright infringement.

False. *The copyright for Night of the Living Dead is part of the wonderful wealth of the public domain. Justin is free to be as creative as he wants with public domain material.*



Fair Use?

Nadine wanted to include video clips from the Olympics illustrating the importance of photo finish. She will only use about 15 seconds from each race. Can she do this?

- Is it transformative?
- How much of each original video is she using?
- What is the purpose of the video?



How Great is the Risk?

A student finds a table of statistical formulas in an online textbook and wants to include the table in a class assignment.

X	1	2	3	4	5
1	1	2	3	4	5
2	2	4	6	8	10
3	3	6	9	12	15
4	4	8	12	16	20



1) Is the table protected by copyright?

- **Original:** independently created (not copied from something else); does not have to be novel, unique, imaginative or inventive
- **Creative:** at least a small amount of creativity (not a list of facts)
- **Fixed:** fixed in a tangible medium of expression

2) Is the proposed use covered by Fair Use or one of the Special Exceptions?

1. the purpose and character of the use
2. the nature of the copyrighted work
3. the amount and substantiality of the portion used
4. the effect of the use upon the potential market for or value of the copyrighted work



Questions?

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(304)-293-9758



References

Center for Social Media. 2008. "Code of Best Practices in Fair Use for Online Video."
<http://centerforsocialmedia.org/remix>

Fishman, Stephen. 2006. *The Copyright Handbook. What Every Writer Needs to Know*, 9th ed. Berkeley, CA: Nolo Press. Book.

Electronic Frontier Foundation. "Teaching Copyright. Copyright Frequently Asked Questions." Web.
<http://www.teachingcopyright.org/handout/copyright-faq>



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E-Mail Address: rbandy@kaycasto.com

I. PROFESSIONAL QUALIFICATIONS:

Admitted to practice before the West Virginia Supreme Court of Appeals, and The United States District Court for the Southern and Northern Districts of West Virginia.

II. PROFESSIONAL EXPERIENCE:

Member, Kay Casto & Chaney PLLC

1997 to Present

Concentrating on Creditor Rights, including commercial and consumer litigation, bankruptcy proceedings, foreclosures, eviction, landlord-tenant, and real estate transactional work; Intellectual Property, including trademark clearance and registration, and copyright issues; currently the Chair of the West Virginia State Bar Intellectual Property Law Committee.

III. EDUCATION:

West Virginia State University

1991

Bachelor of Science in Communications

West Virginia University College of Law

1997

Doctor of Jurisprudence

IV. SEMINARS (Speaker)

National Business Institute:

Collection Law From Start to Finish – June 14, 2016

Advising Creditors During Foreclosure and Repossession Actions – October 3, 2006

West Virginia Collection Law from Start to Finish – November 30, 2005;

Fundamentals of Bankruptcy Law and Procedure in West Virginia – October 2002;

Sterling Education Services:

Landlord Tenant Law – January 15, 2013;

Landlord Tenant Law Update – October 6, 2010;

Basic Bankruptcy – August 22, 2002;

Lorman Education Services:

Understanding The Bankruptcy Reform Act of 2005 – February 17, 2006;

Foreclosure and Repossession in West Virginia – November 30, 2004;

West Virginia State University Economic Development Center – **Entertainment/IP Law 101** – March 15, 2013;

West Virginia Continuing Legal Education – **Emerging Issues Under The New Bankruptcy Law**, Issues From a Creditor's Perspective in Chapter 13 – May 26, 2006;

V. MEMBERSHIPS:

American Bar Association
West Virginia State Bar
Chair, Intellectual Property Law Committee
Kanawha County Bar Association

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EDUCATION

- 1999-2002 **Doctor of Jurisprudence**, Morgantown, WV, *West Virginia University College of Law*
- Top 25% of graduating class.
 - Executive Research Editor, *West Virginia Law Review* (Vol. 104) (Fall 2001 – Spring 2002).
 - Student Work, *Music Distribution Via the Internet: Is It a “Platinum” Idea or a “One Hit Wonder”?* published at 104 W. Va. L. Rev. 209 (Fall 2001).
 - *West Virginia Law Review* (Vol. 103) (Fall 2000 – Spring 2001).
 - First Prize at WVU College of Law, ASCAP Nathan Burkan Memorial Competition for entry titled, *The Audio Home Recording Act of 1992*.
 - Teaching Assistant, Legal Research and Writing Department.
 - CALI Excellence for the Future Award – Legal Research and Writing and Business Torts.
 - Marlyn E. Lugar Trial Association.
 - Who’s Who Among American Law Students.
 - Various WVU Jazz Ensembles (drums).
- 1994-1996 **Master of Business Administration**, Huntington, WV, *Marshall University*
- Student investment club portfolio management committee.
 - “12 O’Clock” Jazz Ensemble (drums).
 - Maintained full-time managerial employment throughout graduate school.
- 1989-1993 **Bachelor of Business Administration – Marketing**, Huntington, WV, *Marshall University*
- *Magna Cum Laude* graduate.
 - Honors Program (English).
 - Dean’s List every semester.
 - “12 O’Clock” Jazz Ensemble (drums), Marching Band (snare drum), and Percussion Ensemble.
 - Student Member, International Association of Jazz Educators (IAJE).
 - Student Member, Percussive Arts Society (PAS).
 - Who’s Who Among American Universities & Colleges (1992 – 1993).
 - Vice President, Tau Kappa Epsilon Fraternity, BN Chapter (1991 – 1993).
- 2004-2005 **Specialist Certificate – Music Business**, Boston, MA, *Berklee College of Music – Berkleemusic Extension School*
- 4.00 GPA.

EXPERIENCE

- Spring 2018-Present **Adjunct Instructor**, Huntington, WV, *Marshall University College of Business*
- Courses taught:
- LE 366 – Entrepreneurial Law & Ethics: Legal and ethical issues involving the creation, maintenance, and expansion of small businesses.
 - MGT 461 – New Venture Dynamics: Fundamentals of entrepreneurship, including issues and challenges that new ventures face during business planning and entry.
 - MKT 340 – Principles of Marketing: Introduction to marketing as the central activity in creating exchanges with customers. Focuses on strategies related to environmental opportunities and threats using product, price, promotion, and distribution tools.
 - MKT 511 – Marketing and Management: Fundamentals of marketing and management for students entering the MBA program.
 - MUS 327 – Introduction to Music Business: A study of the intersection of music and business aimed at developing foundational skills and an understanding of the structure of the music business.
- 2016-Present **Founder/Managing Member**, Nashville, TN, *L. Kevin Levine, PLLC*
- Practice areas include entertainment, copyright, trademark, and business.
 - Provide counsel and assistance to companies and individuals in Tennessee and West Virginia with business planning, name selection and brand development, business formation (including complex “series” limited liability companies and other multi-level structures comprised of multiple owners, managers, and directors), day-to-day business transactions, mergers and acquisitions, intellectual property valuations, intellectual property licensing, business dissolution, and other matters.
 - Provide general counsel and quasi personal management services to entertainment clients, including recording artists, songwriters, record labels, music publishers, touring and merchandise companies, music producers, personal managers, business managers, recording studios, independent filmmakers, screenwriters, literary authors, and visual artists.
 - Counsel clients in diverse industries on trademark and service mark selection, clearance, registration, licensing, transfer, maintenance, and protection issues.
- 2013-2016 **Co-Founder/Member**, Nashville, TN, *DeSalvo & Levine PLLC*
- Practice areas included entertainment, copyright, trademark, and business.
 - Firm marketing manager.
- 2002-2013 **Associate/Special Counsel**, Charleston, WV, *Kay Casto & Chaney PLLC*
- Founder/Chair of firm entertainment practice group.
 - Firm marketing committee.
 - Legal practice areas included entertainment, intellectual property, employment, general civil defense, and insurance defense.
- 1993-1999 **Director of Sales and Marketing**, Huntington, WV, *The Pied Piper, Inc.*
- Managed corporate marketing activities.

- Developed and conducted sales training programs across five locations in two states.
 - Supervised advertising department and assisted with campaign planning, media purchasing, and creative development.
 - Designed and maintained corporate website.
 - Worked with corporate management team to develop annual budgets for merchandise buyers.
 - Oversaw development and growth of custom home audio, video, and automation design and installation division.
- 1997-2004 **Founder/Managing Member**, Huntington, WV, *LKL Properties Unlimited, LLC*
- Managed portfolio of residential rental property.
- 1990-1993 **Retail Sales Consultant**, Huntington, WV, *The Pied Piper, Inc.*
- Assisted clients in home and car audio/video sales and system design.

PEER RECOGNITION

- Martindale-Hubbell Rating: Distinguished.
- Avvo Rating: Excellent/Featured Attorney for Entertainment.

LECTURES AND SPEAKING ENGAGEMENTS

Frequent speaker and guest lecturer on a variety of legal and business topics, including entertainment, copyright, trademark, business formation, and entrepreneurship.

Partial list of recent speaking engagements:

- Presenter, National Business Institute *LLCs From Start to Finish* Continuing Legal Education Seminar, “How to Draft the LLC Operating Agreement” and “LLC Formation and Operation – Process, Procedures, and Pitfalls” – August 6, 2018.
- Guest Lecturer, Marshall University College of Music, “Common Issues in Music Releases” – April 25, 2018.
- Guest Lecturer, Marshall University College of Music, “Copyright 101” – April 25, 2018.
- Panelist, Marshall University, “Copyright Fair Use” – March 14, 2018.
- Presenter, Marshall University College of Business Startup Weekend, “Entrepreneurship” – November 4, 2017.
- Guest Lecturer, Marshall University College of Music, “Music Copyrights” – April 25, 2017.
- Guest Lecturer, Marshall University College of Music, “Music Copyrights” – November 29, 2016.
- Presenter, Tennessee Attorneys *Memo Tennessee Business Law Conference*, “Creative Practices for Handling Business Disputes” – May 20, 2016.
- Guest Lecturer, Marshall University College of Music, “Music Copyrights” – April 12, 2016.
- Guest Lecturer, Marshall University College of Music, “Music Copyrights” – December 8, 2015.

- Presenter, Nashville Bar Association Intellectual Property Committee Meeting, “Trademark Considerations for Musical Artists” – November 16, 2015.
- Presenter, National Business Institute *Top LLC Mistakes in Everyday Business Practices* Continuing Legal Education Seminar, “Single Member Limited Liability Companies,” “LLC Veil Piercing: Mistakes Made in Everyday Practice that Expose Personal Liability,” and “Disputes in the LLC: What Not to Do When the Love is Gone” – June 9, 2015.
- Presenter, National Business Institute *Resolving Business Disputes* Continuing Legal Education Seminar, “Role of Insurance Policies in Business Disputes” and “Creative Practices for Handling Business Disputes” – April 21, 2015.
- Guest Lecturer, Marshall University, “Copyright and Film Clearance Basics” – March 31, 2015.
- Presenter, Nashville Songwriters Association International, “Copyright and Co-Writing” – March 30, 2015.
- Guest Lecturer, Marshall University, “Copyright, Trademark, and Film Clearance Basics” – October 30, 2014.
- Presenter, Nashville Songwriters Association International, “Mind Your Own Business” (Developing Effective Business Practices for Songwriting) – May 21, 2014.
- Presenter, Tennessee Attorneys Memo Continuing Legal Education Seminar, “Cloud Computing: Get Your Head in the Cloud” – May 9, 2014.
- Guest Lecturer, Marshall University College of Music, “Music Copyrights” – December 3, 2013.

PROFESSIONAL LICENSES & ASSOCIATIONS

- Licensed Attorney:
 - Tennessee.
 - West Virginia.
 - U.S. District Court for the Middle District of Tennessee.
 - U.S. District Court for the Southern District of West Virginia.
 - U.S. District Court for the Northern District of West Virginia.
- Tennessee Bar Association (Entertainment & Sports Law Section).
- West Virginia State Bar (Intellectual Property Committee).
- ASCAP Member Writer.
- Aircraft Owners and Pilots Association.
- Past Member, American Inn of Court – Judge John A. Field, Jr. Chapter.
- Past Coordinator, Nashville Songwriters Association International (NSAI) Charleston, WV Chapter.
- Past Member and Trustee, Appalachian Association of Professional Musicians (American Federation of Musicians – Local 136), Charleston, WV.

SKILLS & ABILITIES

- Experienced public speaker.
- Proficient Macintosh and Windows user.
- Proficient Westlaw and Lexis user.
- Experienced Avid Pro Tools user.
- Skilled in various Macintosh and Windows applications, including Word, Excel, Keynote, PowerPoint, and Word Perfect.

INTERESTS

- Performing and writing music.
- Flying (licensed private pilot).
- Boating.
- Motorcycling.
- Snow skiing.

REFERENCES

- Available on request.

WRITING SAMPLES

- Available on request.

INTELLECTUAL PROPERTY COMMITTEE

MARCH 24, 2020
CLE, HOUR 3

**PRESENTER:
MIKAL-ELLEN SUZUKI
BENNETT,
REGISTERED PATENT
ATTORNEY**

GETTING REGISTERED AS A PATENT ATTORNEY WITH THE US PATENT & TRADEMARK OFFICE

We will cover:

- Qualifications to sit for Patent Bar Exam
- Eligibility
- Educational Requirements
- The Patent Bar Exam Itself

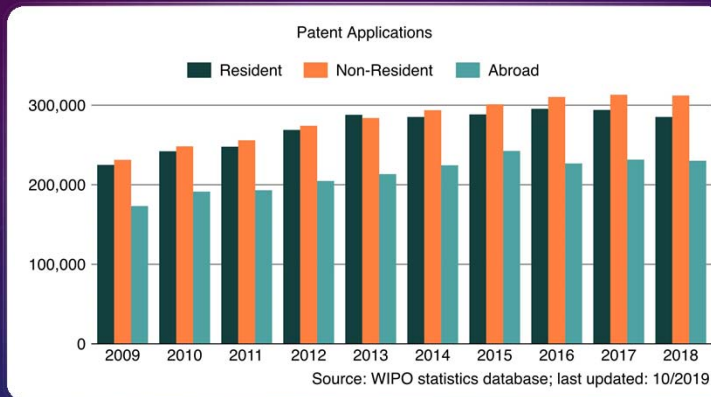


Year of Application or Grant	Utility Patent Applications, U.S. Origin	Utility Patent Applications, Foreign Origin	Patent Applications, Foreign Origin Percent Share	Utility Patent Applications, All Origin Total	Design Patent Applications	Plant Patent Applications	Total Patent Applications *	Utility Patent Grants, U.S. Origin	Utility Patent Grants, Foreign Origin	Patent Grants, Foreign Origin Percent Share	Patent Grants, All Origin Total	Design Patent Grants	Plant Patent Grants	Reissue Patent Grants	Total Patent Grants	Patent Grants, Foreign Origin Percent Share *	Year of Application or Grant
2018	285,095	312,046	52.3	597,141	45,083	1,079	643,303	144,413	163,346	53.1	307,759	30,497	1,208	528	339,992	52	2018
2017	293,994	313,092	51.6	606,956	43,340	1,059	651,355	150,952	167,876	52.7	318,828	30,870	1,311	394	351,403	52	2017
2016	295,327	310,244	51.2	605,571	42,571	1,177	649,119	143,725	159,324	52.6	303,049	28,873	1,215	426	333,583	52	2016
2015	288,335	301,075	51.1	589,410	39,097	1,140	629,647	146,969	157,439	52.8	298,408	25,966	1,074	512	325,980	52	2015
2014	283,096	290,706	50.7	573,802	35,378	1,063	615,243	144,621	136,057	51.9	300,677	23,657	1,072	626	326,032	51	2014
2013	287,831	283,781	49.6	571,612	36,054	1,406	609,052	133,993	144,242	51.9	277,835	23,468	847	798	302,948	51	2013
2012	268,782	274,033	50.5	542,815	32,799	1,149	576,763	121,026	132,329	52.2	253,355	21,951	860	822	276,788	52	2012
2011	247,750	255,832	50.8	503,582	30,467	1,139	535,188	108,622	115,883	51.6	224,505	21,356	823	1,029	247,713	51	2011
2010	241,977	248,249	50.6	490,226	29,059	992	520,277	107,791	111,823	50.9	219,614	22,799	981	947	244,341	50	2010
2009	224,912	231,194	50.7	456,106	28,806	959	482,471	82,382	84,967	50.8	167,349	23,116	1,009	453	191,927	50	2009
2008	231,588	224,733	49.2	456,321	27,782	1,209	485,312	77,502	80,270	50.9	157,772	25,565	1,240	647	185,234	50	2008
2007	241,347	214,807	47.1	456,154	27,752	1,049	484,955	78,526	77,756	49.4	157,282	24,062	1,047	508	182,899	49	2007
2006	221,784	204,183	47.9	425,967	25,515	1,151	452,633	89,823	83,949	48.3	173,772	20,965	1,149	519	196,405	48	2006
2005	207,867	182,866	46.8	390,733	25,555	1,222	417,508	74,637	69,169	48.1	143,806	12,951	716	245	157,718	48	2005
2004	198,622	165,405	45.6	364,027	23,082	1,221	387,328	62,788	60,200	47.6	123,988	14,629	1,036	306	139,923	46	2004

PATENT FILINGS ON THE RISE IN THE UNITED STATES

There are approximately 29,000 individuals registered to practice before the US Patent & Trademark Office, per the Bureau of Labor Statistics





PATENT STATS FROM WIPO



USPTO REQUIREMENTS

43 SHORT PAGES

OR

YOU CAN HANG OUT WITH ME FOR THE NEXT 50
MINUTES

[HTTPS://WWW.USPTO.GOV/SITES/DEFAULT/FILES/DOCU
MENTS/OED_GRB.PDF](https://www.uspto.gov/sites/default/files/documents/OED_GRB.PDF)



ELIGIBILITY REQUIREMENTS

- LAW LICENSE IN ANY US STATE (OR DC)
- EDUCATIONAL REQUIREMENTS MET
- MUST PROVE TO DIRECTOR'S SATISFACTION THAT YOU'RE REFORMED, IF ANY OF THE FOLLOWING APPLY: PREVIOUS FELONY CONVICTION OR PLEA; DISBARRED BY ANY PROFESSION FOR 5 YEARS; PREVIOUSLY DENIED BY USPTO FOR LACK OF GOOD CHARACTER



EDUCATIONAL REQUIREMENTS

- CATEGORY A - DEGREE IN APPROVED FIELD
- CATEGORY B - HOURS IN APPROVED FIELD(S)
- CATEGORY C - PRACTICAL ENGINEERING OR SCIENTIFIC EXPERIENCE



CATEGORY A: APPROVED DEGREE

BIOLOGY	PHYSICS TEXTILE TECHNOLOGY	ENGINEERING PHYSICS
BIOCHEMISTRY	AERONAUTICAL ENGINEERING	GENERAL ENGINEERING
BOTANY	AGRICULTURAL ENGINEERING	GEOLOGICAL ENGINEERING
COMPUTER SCIENCE*	BIOMEDICAL ENGINEERING	INDUSTRIAL ENGINEERING
ELECTRONICS TECHNOLOGY	CERAMIC ENGINEERING	MECHANICAL ENGINEERING
FOOD TECHNOLOGY	CHEMICAL ENGINEERING	METALLURGICAL ENGINEERING
GENERAL CHEMISTRY	CIVIL ENGINEERING	MINING ENGINEERING
MARINE TECHNOLOGY	COMPUTER ENGINEERING	NUCLEAR ENGINEERING
MICROBIOLOGY	ELECTRICAL ENGINEERING	PETROLEUM ENGINEERING
MOLECULAR BIOLOGY	ELECTROCHEMICAL ENG.	
ORGANIC CHEMISTRY		
PHARMACOLOGY		



GRADUATE DEGREE IN AN “APPROVED FIELD”?



CATEGORY B: APPROVED HOURS

- OPTION 1: 24 SEMESTER HOURS IN PHYSICS. ONLY PHYSICS COURSES FOR PHYSICS MAJORS WILL BE ACCEPTED.
- OPTION 2: 32 SEMESTER HOURS IN A COMBINATION CONSISTING OF THE FOLLOWING: 8 SEMESTER HOURS OF CHEMISTRY OR 8 SEMESTER HOURS OF PHYSICS, AND 24 SEMESTER HOURS IN BIOLOGY, BOTANY, MICROBIOLOGY, OR MOLECULAR BIOLOGY.
- OPTION 3: 30 SEMESTER HOURS IN CHEMISTRY. ONLY CHEMISTRY COURSES FOR CHEMISTRY MAJORS WILL BE ACCEPTED.
- OPTION 4: 40 SEMESTER HOURS IN A COMBINATION CONSISTING OF THE FOLLOWING: 8 SEMESTER HOURS OF CHEMISTRY OR 8 SEMESTER HOURS OF PHYSICS, AND 32 SEMESTER HOURS OF CHEMISTRY, PHYSICS, BIOLOGY, BOTANY, MICROBIOLOGY, MOLECULAR BIOLOGY, OR ENGINEERING.



OTHER ACCEPTABLE COURSEWORK

UNDER OPTION 4, UP TO FOUR SEMESTER HOURS WILL BE ACCEPTED FOR COURSES IN DESIGN ENGINEERING OR DRAFTING. ALSO, UNDER OPTION 4, COMPUTER SCIENCE COURSES THAT STRESS THEORETICAL FOUNDATIONS, ANALYSIS, AND DESIGN, AND INCLUDE SUBSTANTIAL LABORATORY WORK, INCLUDING SOFTWARE DEVELOPMENT WILL BE ACCEPTED. SUCH COURSES INCLUDE THE REPRESENTATION AND TRANSFORMATION OF INFORMATION STRUCTURES, THE THEORETICAL MODELS FOR SUCH REPRESENTATIONS AND TRANSFORMATIONS, BASIC COVERAGE OF -6- ALGORITHMS, DATA STRUCTURES, SOFTWARE DESIGN WITH A LABORATORY, PROGRAMMING LANGUAGES WITH A LABORATORY, AND COMPUTER ORGANIZATION AND ARCHITECTURE. OTHER ACCEPTABLE COURSES IN COMPUTER SCIENCE INCLUDE ARTIFICIAL INTELLIGENCE AND ROBOTICS, NETWORKING, LINEAR CIRCUITS, LOGIC CIRCUITS, OPERATING SYSTEMS, AND SOFTWARE METHODOLOGY AND ENGINEERING. HOWEVER, THE COURSES MAY NOT BE SUBSTITUTED FOR THE EIGHT SEMESTER HOURS OF CHEMISTRY OR PHYSICS REQUIRED UNDER OPTION 4.



TRANSCRIPTS

- OFFICIAL TRANSCRIPTS ONLY
 - Raised seal
- GRADES MUST BE “C-” OR ABOVE FOR CREDITS TO COUNT TOWARD OPTIONS
- MUST SHOW THE SAME NAME AS USPTO APPLICATION
 - (Mostly) Ladies - May submit official documentation such as Marriage Certificate or Divorce Decree, if different
- HAVING THE UNIVERSITIES THEMSELVES MAIL TRANSCRIPTS DIRECTLY TO THE USPTO CREATES EXTRA WORK FOR EVERYONE



OTHER TRAINING

“OTHER FACTORS WILL ALSO BE CONSIDERED ON A CASE-BY-CASE BASIS WITH RESPECT TO SCIENTIFIC AND TECHNICAL TRAINING.”

WHAT OTHER FACTORS?
NOT ENUMERATED



OTHER EDUCATION

OTHER EDUCATION (E.G., FOREIGN EDUCATION, ACADEMIC CREDIT FOR WORK EXPERIENCE, MILITARY EDUCATION, LIFE EXPERIENCE, ETC.) IS ACCEPTABLE TO THE EXTENT OBJECTIVE EVIDENCE DEMONSTRATES THE EDUCATION IS EQUIVALENT TO THAT RECEIVED AT AN ACCREDITED U. S COLLEGE OR UNIVERSITY IN ONE OF THE SUBJECTS LISTED IN CATEGORY A.



SO WHAT IS **NOT** ACCEPTABLE??

- MILITARY SERVICE
- COURSES IN THE FOLLOWING AREAS:
 - anthropology
 - astronomy
 - audited courses
 - behavioral science courses such as psychology and sociology
 - continuing legal education courses
 - courses in public health
 - courses relating technology to politics or policy
 - courses offered by corporations to corporate employees
 - courses in management, business administration and operations research
 - courses on how to use computer software
 - courses directed to data management and management information systems
 - courses to develop manual, processing or fabrication skills (e.g., machine operation, wiring, soldering, etc.)
 - courses taken on a pass/fail basis
 - correspondence courses
- ecology
- economics of technology
- history of science, engineering and technology
- field identification of plants and/or animals
- home or personal independent study courses
- high school level courses
- mathematics courses
- one day conferences
- patent law courses
- paleontology
- political science courses
- repair and maintenance courses
- radio operator license courses
- science courses for non-science majors
- vocational training courses
- work study programs
- SEMINAR COURSES AND OTHER COURSES THAT DO NOT PROVIDE ACTUAL TRAINING



CATEGORY C: ENGINEERING/EXPERIENCE

“AN APPLICANT ... MAY ESTABLISH THE REQUIRED TECHNICAL TRAINING BY DEMONSTRATING THAT HE OR SHE HAS TAKEN AND PASSED THE FUNDAMENTALS OF ENGINEERING (FE) TEST.”

MORE INFO MAY BE FOUND AT THE SECRETARY'S OFFICE FOR THE RESPECTIVE BOARDS OF EACH STATE.

FOR WV STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS:
[HTTPS://WWW.WVPEBD.ORG/](https://www.wvpebd.org/)



YOU'RE SATISFACTORILY EDUCATED!!

WHAT'S NEXT?



THE PATENT BAR EXAM

OVERALL PASS RATE IS USUALLY SOMEWHERE ABOVE 40%
(BOTH FIRST-TIME AND REPEAT TEST-TAKERS)

COMPUTERIZED

MULTIPLE CHOICE

MPEP

OLD TESTS!



QUESTIONS?

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