

ENTERTAINMENT LAW  
Spring 2023  
Prof. Sandra Aistars  
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Class Schedule & Office Hours

Class meetings: T, Th 9:50-11:15 a.m. ET (in person)

Office hours: W 1-2:00pm ET (and by appointment) via zoom

Overview

This course will introduce you to the field of entertainment law. The course will survey several areas of legal doctrine that are common to the entire industry: copyright law, trademark and right of publicity, industry organization, expressive torts and their First Amendment limitations, and contracts pertaining to credit and control.

Grades will be based on a final paper which will be targeted for submission to one of several recognized IP & entertainment law writing competitions, and in-class discussion of casebook problems as well as presentation and evaluation of papers in progress. You will receive 20% of your grade for the quality and thoroughness of the comments you give to your classmates on their work in progress.

We will examine what motivates the various entities and individuals behind the deals, disputes, and decisions you will study. Interests range from artistic freedom and personal expression to managing privacy/publicity, and seeking success and financial reward or return on investments. I will urge you to develop strategic thinking skills and contemplate the lawyer's role in complex business relationships such as those in the entertainment industry.

Learning Outcomes

Each set of reading assignments is tied to a particular learning objective. The overall learning outcomes are below.

- (1) to develop a solid foundation in the various sources of law applicable to the entertainment industry
- (2) to understand the business and other non-legal considerations that motivate entertainment industry clients, including financial and creative goals, and how such considerations influence deals and legal disputes.

(3) to develop and hone the professional skills needed to represent clients, including client counseling, problem solving, negotiation, risk management.

(4) to understand the professional obligations of the entertainment lawyer

### Course Materials

The primary source of reading assignments for the course is Sherri Burr, Entertainment Law: Cases and materials in Established and Emerging Media (3d ed. 2021).

### Useful Resources

Jeffrey Brabec & Todd Brabec, Music Money and Success 8th Edition: The Insider's Guide to Making Money in the Music Business (8th Ed. 2018) ISBN: 978- 1787601383

Ari Herstand, How To Make It in the New Music Business: Practical Tips on Building a Loyal Following and Making a Living as a Musician (3d Ed. 2023) ISBN-13: 978-1324091868

Donald Passman, All You Need to Know About the Music Business (10th Ed. 2019) ISBN-13: 978-1501122187

Jon Garon, The Entrepreneur's IP Business Handbook (free download from the author's website)

[https://garondigital.com/wp-content/uploads/2022/02/Garon-Entrepreneurs\\_IP-Bus-Handbook-Final.pdf](https://garondigital.com/wp-content/uploads/2022/02/Garon-Entrepreneurs_IP-Bus-Handbook-Final.pdf)

### Requirements & Assessment:

#### Participation

Class participation is crucial to your own learning experience and the experience of your classmates and will therefore comprise a portion of your final grade. I hope you will participate voluntarily, however if discussions seem slow to evolve or only a few people participate, in order to ensure comprehensive discussion of materials and engagement by all students, I will cycle through the course roster and ask particular students to be responsible for leading segments of the discussion.

To excel on the participation component of your final grade, aim to contribute at least one meaningful comment per week. If you did not have the opportunity to volunteer comments on a particular day, or if you have additional views and resources to share, you may also contribute to the class discussion board. Particularly welcome (and recognized for credit) are posts that share relevant current legal developments, personal experiences, or other information about entertainment law and industry disputes that you learn of outside of class. Please also comment on the contributions of your classmates on these topics as appropriate.

## Final Paper

Each student will write a paper suitable for entry to one of the following writing competitions.

Please note that each competition has a different set of rules, and permitted paper lengths vary. Word of warning: a shorter page count does not necessarily mean it will be easier to meet the assignment goals. While brevity is a virtue, to write a thoughtful analysis that contributes significantly to the understanding of the law you must edit carefully and. Write skillfully with a limited word count. Please choose from one of the competitions below (please note that some websites have not yet been updated to include current year rules. Please assume that rules will not change and follow the rules for the year posted). Some submission deadlines will be incompatible with submitting this semester – you will wait to submit entries until next semester should you wish to compete.

Competitions: Please choose one of the following competitions to submit your Final Paper to. When turning in outlines & final paper

1. Print out and attach/scan the competition guidelines for the competition you are entering so that I and your peer evaluator have them for handy reference, and follow them exactly

[https://naras.a.bigcontent.io/v1/static/ELI Rules 23 FINAL](https://naras.a.bigcontent.io/v1/static/ELI_Rules_23_FINAL)

<https://www.vsb.org/site/sections/intellectualproperty/writing-competition>

<https://cardozo.yu.edu/sites/default/files/2022-01/ConnerWritingCompetitionFlyer.PDF>

<https://nysba.org/awards-competitions/entertainment-arts-and-sports-law-section-phil-cowan-judith-bresler-memorial-scholarship/>

<https://www.accesslex.org/writing-competition/louis-jackson-memorial-national-student-writing-competition-employment-and-labor-law>

<https://www.accesslex.org/writing-competition/mendes-hershman-writing-contest>

<https://www.accesslex.org/writing-competition/berkeley-technology-law-journal-writing-competition>

<https://www.accesslex.org/writing-competition/david-s-rosenbaum-scholarship>

Alternatively, should you wish to explore your literary side, instead of writing a Final Paper, you may submit a story to one of the following legal fiction writing competitions and prepare accompanying legal documents and a client memo (not required by the competitions) explaining a proposed legal transaction relevant to the story you write as described below.

- You must represent yourself (or pretend you are representing another author who has written the work of legal fiction like your own) and prepare an agreement that appropriately handles some aspect of a transaction related to the work. Suggested transactions to consider include: acquisition of life story rights or other needed rights clearance to publish the work, a publishing agreement with a publisher acquiring the work, an option agreement with a TV or film production company, an idea submission agreement to a media company of some variety (e.g., film, TV, video game, limited series), etc.
- You must also submit a client memo explaining the terms of your proposed transaction, the pros and cons of the agreement as drafted for the author, and attach a copy of the draft agreement and a copy of the relevant original short story as it will be submitted to the legal fiction contest. The grading requirements for accompanying agreements and explanatory memos are included in the Grading Rubric with a \*
- <https://hls.harvard.edu/legal-tech-fictional-writing-competition/>
- [https://www.abajournal.com/contests/ross\\_essay](https://www.abajournal.com/contests/ross_essay)

Grading Rubric: See the requirements set forth below for grading criteria for the final paper.

### **Excellent (9 or 10 points)**

Thesis: Thesis is useful, novel and non-obvious. It is clearly and succinctly stated and articulates both a legal problem and a solution not likely to be suggested by others.

Introduction/Conclusion: The topics are clearly introduced. Introduction includes a concise overview of the paper. The conclusion is strong.

Body: Information is relevant and presented in a logical order. Strong evidence of attention and extensive knowledge of the topics is evident.

Support: Main ideas are clear and well supported by detailed and accurate information including extensive legal analysis of relevant case law and statutory provisions.

Writing/ Mechanics: Clear organizational structure, smooth transitions. Writing is clear and concise. No spelling or grammatical errors. All formatting requirements met.

Citations: Correct bluebook citation format is used.

\*Accompanying agreement: Agreement selected is clearly relevant to the story submitted. Correctly identifies and appropriately addresses all needed terms from the perspective of the author. Explanatory memo addresses each term and its relevance to the client, explaining meaning, pros and cons and why provision is included.

### **Competent (7 or 8 points)**

Thesis: Thesis is novel and non-obvious. It articulates both a problem and a solution that is not primarily policy-oriented.

Introduction/Conclusion: The topics are introduced. The organization of the paper is minimally laid out in the introduction. A conclusion is included.

Body: Information is mostly relevant and presented in a logical order. Some evidence of attention and knowledge of the topics is evident.

Support: Main ideas are clear but only somewhat supported by detailed information. Some discussion of relevant case law and statutory provisions is included.

Writing mechanics: Basic organizational structure, transitions are evident. Writing is mostly clear and concise. Few spelling or grammatical errors. Most formatting requirements met.

Citations: Correct citation format is mostly used.

\*Accompanying agreement: Agreement selected is relevant to the story submitted. Some evidence that needed terms have been considered and included taking into account the perspective of the author. Explanatory memo addresses basic terms and how they affect the client and is understandable.

### **Needs Improvement 5 or 6 points**

Thesis: The thesis is likely to be preempted by other authors or is obvious or not well articulated. Thesis not phrased in form of problem/solution or presents a purely policy-based solution (e.g., Congress should pass a law).

Introduction/Conclusion: The topics are stated. No overview of the paper included. A conclusion is included.

Body: Presence of substantial irrelevant information or illogical order. Limited evidence of attention and knowledge of the topics.

Support: Main ideas are somewhat clear. Support for ideas is minimal. Lacks adequate analysis of case law or statutory provisions.

Writing mechanics: Very little structure, awkward transitions. Writing is somewhat clear. Several spelling or grammatical errors. Some formatting requirements met.

Citations: Numerous citation errors.

\*Accompanying agreement: Agreement selected is somewhat relevant to the story submitted. Includes basic relevant provisions, but limited evidence of taking into account the perspective of the author. Explanatory memo is not entirely clear or accurate on basic terms and how they affect the client, or is difficult to understand.

### **Unacceptable < 5 points**

Thesis: No clear thesis.

Introduction/ Conclusion: No clear introduction or conclusion.

Body: Use of largely irrelevant information. Lack of order/organization. Little evidence of attention and knowledge of the topics.

Support: Main ideas are unclear or unsupported. No or little analysis of case law or statutory provisions.

Writing mechanics: No structure or organization. No transitions. Writing is unclear. Numerous spelling or grammatical errors. Few formatting requirements met.

Citations: Significant citation errors or lack of citations.

\*Accompanying agreement: Agreement selected is not relevant or needed for the story submitted. Provisions of draft agreement are missing, unclear or poorly drafted. No evidence of taking into account the perspective of the author. Explanatory memo is unclear or inaccurate on basic terms and how they affect the client, or is difficult to understand. Numerous spelling or grammatical errors.

Email Communication: Students must use their MasonLive email account to receive important University information, including communications related to this class. In accordance with University policy the professors will not respond to messages sent from or send messages to a non-Mason email address.

Attendance: Regular and punctual attendance in person unless alternate accommodations are requested via the Assistant Dean, Student Academic Affairs is required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g., a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs to make appropriate arrangements and notify me. Substitute assignments are not possible.

Class Recordings Prohibited: Pursuant to Academic Regulation 4-2.2, no portion of a class session may be preserved by means of a recording device such as an audio recording device or camera.

Paper Extensions: Except for instances described in AR 4-4.1(b)(ii), faculty may not grant deadline extensions for final papers; all authority in this matter is delegated to the Assistant Dean, Student Academic Affairs. Excuses and requests for a deadline extension must be presented, with appropriate documentation, to the Assistant Dean, Student Academic Affairs. Except in emergencies, deadline extensions must be sought in advance of the scheduled deadline. Note that there are steep deductions in grades required for every day past the scheduled deadline a paper is turned in. **Final Papers are due by midnight on April 20.**

**ACADEMIC INTEGRITY:** It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here:

<https://sls.gmu.edu/honor/>.

**CLASSROOM ACCOMMODATIONS:** Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit (<https://ds.gmu.edu/>) for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at [ods@gmu.edu](mailto:ods@gmu.edu) or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information

STUDENT HONOR CODE - [Click Here](#)

ACADEMIC REGULATIONS - [Click Here](#)

UNIVERSITY LIFE: University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

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**Reading Assignments:**

Part I: Inspiration, Production and Ownership

Objective: Understand how intellectual property principles intersect with the creative process, how they influence artists, their patrons, collaborators, and industry participants, and how business and creative relationships affect the production and dissemination of creative works.

Class 1 (Jan 17)- Protecting artistic vision: Pitches & treatments

- Overview of syllabus
- pp. 21-54

Class 2 (Jan 19) – VIA ZOOM - Protecting the artist’s work: Copyright protection & infringement

- Meeting with short story author [Art Taylor](#) to discuss authorship, especially short story writing, challenges & motivations for authors in negotiating publishing and other contracts & to hear tips on writing for those interested in pursuing the short story + agreement option for the final paper
- Joint works: pp 67-73
- Copyright infringement pp. 118-128 (substantial similarity)

Class 3 (Jan 24) — Ownership and transfer of copyright & work for hire doctrine

- Discussion with [Joshua Kaufman](#), head of Venable’s Copyright & Licensing group and counsel for sculptor James Earl Reid before the Supreme Court in CCNV v. Reid
- Community for Creative Non-Violence v. Reid, <https://supreme.justia.com/cases/federal/us/490/730/#tab-opinion-1957985>  
[https://apps.oyez.org/player/#/rehnquist3/oral\\_argument\\_audio/18726](https://apps.oyez.org/player/#/rehnquist3/oral_argument_audio/18726)

- pp. 61-63

**Class 4 (Jan 26) Submit Up to 3 ideas for Paper Topics/and Identify Competition Choices Before Class — You need to do research & develop a preliminary thesis stated as a problem/solution**

- Read this link for some tips on how to pick topics improve your chances of winning a legal writing competition. (The examples of bad topics are dated but the advice is spot on) [https://personal.ericgoldman.org/how\\_to\\_win\\_a\\_wr/](https://personal.ericgoldman.org/how_to_win_a_wr/)
- **Explain each topic and state a thesis as problem/solution. If submitting more than one idea rank them in order of likelihood of success/preemption.**
- **If pursuing fiction option focus on identifying the type of accompanying agreement you will be preparing and how it will connect to the short story**
  - **Identify the model agreements you are reviewing and why you think they will be relevant to your story project- this means understanding the types of provisions they typically include & why, common variations in agreements, pros/cons for clients etc.**
  - **Identify the top issues that you think you will need to explain to a client to allow them to understand the pros and cons of various provisions in the agreement**
- Class discussion will focus on group & professor feedback on paper topics
- **Listen to the discussion identify classmates who you wish to collaborate with to present papers/provide feedback on outlines later in the semester based on their project descriptions— coordinate and sign up to groups by next class**
  - I suggest you do so with some consideration of how to make a coherent group participation based on subject matter/writing competition chosen) and jointly decide how to deliver presentations during class periods in April.
  - See Part VI below for format ideas for presentations in April

**Class 5 (Jan 31) — Infringement/Defenses to infringement: Fair use and other limitations on copyright owners' exclusive rights.**

- Innocent infringer pp. 174-180
- Fair Use and the impact of major litigation over its contours on creators and distributors of works pp.180 -215
- **Commit to small groups for outline feedback & paper presentations — I suggest you begin thinking of the format for your presentation even before the outlines are due in case it impacts what you include in your outline**

Part II: The Artist as Brand

Objective: Understand how the law balances interests of third parties including consumer protection and news reporting/first amendment interests with the personal privacy and financial interests of celebrities and others depicted or appearing in the media.

Class 6 (Feb. 2) —Trademarks, merchandising, and the power of a name

- Who owns a trademarked band name? pp. 252 -260
- Disparaging or immoral/scandalous trademarks pp 260-272

Classes 7 & 8 (Feb 7) (Feb 9)— Publicity rights v. Privacy Rights: distinguishing between economic and privacy interests

- Privacy: pp. 297-311, 324-330, 336-341
- Publicity: pp. 341-347, 363-369

### Part III: The Artist as Worker

Objective: Understand the protections and limitations of the labor and employment law regimes as applied to creative workers and their workspaces.

Class 9 (Feb 14)— Issues in collective representation: Actors' and writers' unions

- pp. 462-478

Class 10 (Feb 16)—Issues in collective representation: Directors' and producers' unions; craftspeople

- pp. 479-501

Class 11 (Feb 21)—Discrimination in the creative workplace

- pp. 848-878
- (Invited) [Jeff Bennett](#), General Counsel SAG-AFTRA

### Part IV: The Business of Show-business

Objective: Understand how and why certain financial and creative terms of entertainment deals are negotiated, and interpreted.

Class 12 (Feb 23) — Dealmaking in the entertainment industry

- Formation & performance of contracts pp. 515-524, 541-550, 554-63,
- Unanticipated issues 565-569, 594-598

Class 13 (Feb 28) — Credits & billing

- pp. 609-616, 617-627, 628-633

Class 14 (Mar 2) — Compensation & Control

- Profit participation & royalties pp. 659-664, 690-695
- Pay or play clauses pp. 682-689

SPRING BREAK

Class 15 (Mar 21) — **Submit Outlines to Peers and Professor Before Class – include competition guidelines**

- Class discussion will focus on outlines and selecting groups for paper presentations
- Exchange outlines with your group members for comments. **Memos providing comments are due on Mar 28**
  - Comments should be discussed with the group informally and shared individually with peers you are helping in the course of preparing group presentations to be delivered in April
  - Additionally, each student in the group must separately critique and comment on every other group member's outline in separate written memos (i.e. individual memos must be written covering each student in the group, by each student in the group) and be submitted to the Professor making substantive as well as stylistic/presentation/comprehension suggestions and notes relevant to compliance with competition and syllabus requirements. It is expected that you will convey these same notes to your peers either verbally or by sharing the memo so that they can improve their work.
  - **Assign each outline a score of 1-10 based on the likelihood that the finished work product will meet the requirements of the grading rubric** based on the planning and thoroughness of the outline, accuracy and completeness of source citations noted in the outline, thoroughness and attention to detail in thinking through and explaining any applicable agreements being proposed if the student is writing a short story and agreement/client memo etc. Remember that you are graded on a mandatory curve so not everyone will be able to get a 10 and this is only an outline – not a final grade.
  - **Written memos critiquing peer outlines comprise 20% of your grade.** Be thorough and explicit in giving your peers guidance on how to improve their work. This will ensure that everyone thoroughly understands each other's work for the group presentation and that the group presentation is coherent and engaging. It will also improve the overall grading process – you are graded

on your assistance to and assessment of your peers only, not on their underlying work.

- **If a student has prepared an outline that is too incomplete to comment on thoroughly you should assign a 0 for the score to signal that you had difficulty meeting your end of the assignment through no fault of your own.** Remember that I am also receiving the work independently, so I should not be surprised by your assessment.
- **I determine final grades regardless of the scores assigned by students.**

#### Class 16 (March 23) — Obscenity & Violence

- Sex pp.723-733
- Violence pp.742-748
- Ratings pp.752-760, 799-808

#### Part V: Professional Representation in the Entertainment Industry

- Objective: Understand the rights and responsibilities of third-party actors including their fiduciary obligations, terms of retention, and potential conflicts of interest.

#### Class 17 (Mar 28) — **Submit Memos of Comments on Outlines before class**

##### Agents and Managers

- Agents pp. 379-385
- Managers pp. 398-403, 403-409

#### Class 18(Mar 30) — Attorneys

- Ethical issues pp. 430-441
- Client expectations pp. 441-443
- Attorney novelists – conflicts pp. 451-460

#### Class 19 (Apr 4) — (Invited) Meeting with [Karyn Temple](#) – SVP and Global GC of Motion Picture Association

#### Part VI: Paper Presentations by Students

- The remaining sessions will be taken up by discussions of student papers in progress.  
Paper presentations:
- There are pros/cons in selecting dates to present – presenters on earlier dates may have time to incorporate feedback received from students and professor during presentations into final paper; presenters on later dates may have more time to polish the presentations themselves
- Presentations should

- Be engaging and informative and cover the material of all students participating in the group in some fashion
- Take the full time allotted to the presentation but not more
- Engage the audience/class and encourage their participation/questions/reactions
- Demonstrate substantive knowledge of the subject matter being discussed as well as ability to convey/counsel entertainment clients about it
- Format ideas to get you started ....
  - Moderated panel discussion with each panelist presenting their paper then engaging in panel discussion of each others papers and responding to q & a from audience
  - Client counseling session for authors considering particular deals related to their stories
  - Simulated negotiation or arbitration over an agreement
  - Entertainment Law Podcast/Webcast with short segments where all participants discuss the issues in each paper
  - Debate pro/con on issues or viewing them from different parties' perspectives in the deal

Class 20 (Apr 6) —  
 Class 21 (Apr 11) —  
 Class 22 (Apr 13) —  
 Class 23 (Apr 18) —  
 Class 24 (Apr 20) —

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In addition to the above reading assignments, please observe the following deadlines to check in with me on progress towards your final papers:

Submit topic formulated as problem/solution & identify competition you will be participating in: **Jan 26**

Submit outline: **March 21**

Outline should consist of

- 5-7 paragraph introduction that clearly and crisply states the thesis in the form of a problem and solution, and provides a concise overview of the paper setting forth the main themes and arguments to be addressed in service of the thesis and the conclusion to be reached.

- Followed by section headings and subheadings identifying the major points and sub-points you intend to make in your article;
  - in each section/subsection begin with a couple of sentences that outline the main points/arguments you will make in that section and identify the statutes or case law that you will cite (and for what proposition). Feel free to do this in bullet point form.
- Final Paper: **April 20**

#### Legal Fiction & Accompanying Agreements & Memo

Identify competition writing for & type of agreement/transaction planned: **Jan 26**

Submit story outline and outline client memo: **March 21**

- Story outline should be sufficiently developed to be able to identify legal issues you will be addressing in the accompanying deal memo and agreement. For instance, if you anticipate addressing rights clearance issues then make sure the outline of plot points explains the necessary elements so I can evaluate how the agreement relates to the story outline (e.g., if you anticipate quoting extensively from another copyrighted work in a way that is integrated into your plot and requires the other author's/publisher's agreement identify the work you will quote from and give the basic outlines of what rights you think you'll need).
- Identify the type of agreement you will be preparing and find 3-5 good samples of such an agreement of varying complexity and written from different negotiating perspectives and evaluate pros/cons of each agreement, flagging provisions to pull for a "best of breed" draft.
- Prepare a list of bullet points of the main issues to be conveyed to the client about the proposed deal. Make sure you are writing in terms a non-lawyer can understand without doing research.

Final Paper/Agreement/Memo: **April 20**