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**UNFAIR COMPETITION, AND RELATED TOPICS
BEARING ON THE PROTECTION OF
WORKS OF AUTHORSHIP**

ELEVENTH EDITION

RALPH S. BROWN

ROBERT C. DENICOLA

FOUNDATION PRESS

UNIVERSITY CASEBOOK SERIES®

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UNFAIR COMPETITION, AND RELATED TOPICS BEARING ON THE PROTECTION OF WORKS OF AUTHORSHIP

ELEVENTH EDITION

by

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FOUNDATION PRESS

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To Christine

PREFACE

The First Edition of this casebook was the product of a collaboration between Professor Benjamin Kaplan of Harvard and Professor Ralph Brown of Yale—two giant figures in twentieth-century intellectual property law. Their book was the first casebook published on copyright law. Professor Kaplan's elevation to the bench precluded his direct participation in later editions, but the casebook continued to benefit from his generous counsel. Ralph Brown remained the principal force behind six subsequent editions. I had the pleasure of working with Ralph on four of those editions.^a

Like its predecessors, this Eleventh Edition is distinctive in giving substantial attention to topics related to copyright, especially unfair competition. Copyright and its many cousins—unfair competition, publicity rights, moral rights, and corners of contract—continue to expand. The frequent amendments to the Copyright Act demand discussion, and the growth of unfair competition appears relentless. As a consequence, this casebook has steadily increased in length. Although the book is still manageable in size, probably no course will cover every page. To help with organization, virtually all the materials on federal copyright law appear in Part I. Most of that can be covered even in a two-credit course.

Copyright law is undergoing major transformations as new technologies spawn new challenges. The technology of photocopying still eludes control even as it is supplanted by digital dissemination. The “broadcast” media continue to change shape with new forms of transmission and new means of reception. Copyright law had barely digested computer programs when it was forced to confront the enormous capacity of the Internet to disseminate works of authorship. In the face of emerging technologies, can either Congress or the courts effectively secure to authors the exclusive right to their writings without undermining the ultimate purpose of the constitutional grant?

In spite of all these matters, the emphasis here remains on fundamentals. In their Preface to the First Edition, Professors Kaplan and Brown recalled Justice Story's now famous observation that copyrights, in company with patents, “approach, nearer than any other class of cases belonging to forensic discussions, to what may be called the metaphysics of the law, where the distinctions are, or at least may be, very subtle and refined, and, sometimes, almost evanescent.”^b Who is an “author”? What is a “writing”? What are the exclusive rights of authors in their writings and what, on the other hand, is “fair use”? The courts continue to instruct us almost daily on all these questions. It is impossible to predict what may come next, except to mark the obvious and portentous acceleration of the technologies that disseminate works of authorship. Meanwhile, there is a wealth of issues, some old and some new, to tantalize and entertain both students and teachers.

^a Ralph Brown's contributions to the law of intellectual property are recounted in R. Denicola, *Freedom to Copy*, 108 Yale L.J. 1661 (1999), part of a Symposium in Ralph's honor published by the *Yale Law Journal*. Ralph's admiration for his original co-author is evident in his review of Benjamin Kaplan's most famous work, *An Unhurried View of Copyright* (Columbia Univ. Press 1967). R. Brown, Book Review, 80 Harv.L.Rev. 1621 (1967).

^b *Folsom v. Marsh*, 9 Fed.Cas. 342, 344 (C.C.D.Mass.1841) (No. 4901).

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AUTHORSHIP

The Congress shall have the Power . . . To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

*Constitution of the United States, Article I,
Section 8*

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