

Government of the Russian Federation

National Research University Higher School of Economics

Faculty of Communications, Media, and Design

Department of Media

Course Syllabus

“Entertainment Law”

for Master level students of various specializations (the “MAGOLEGO course”)

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Approved by the meeting of the Department on 13 July 2017
Head of the Department _____/I.V. Kiriya/

Approved by the Academic Council of the Faculty on 13 July 2017
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Moscow, 2017

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1. COURSE SUMMARY

The course is specially designed to provide both theoretical and practical legal training for students, who propose to work in or establish businesses in the entertainment industry.

Through lectures and case studies, the course titled, “Entertainment Law,” **aims** to provide students with a solid understanding of the main legal trends and issues existing in the entertainment fields, particularly music, film, television, publishing, and online entertainment industries in Russia, the USA, as well as in other countries. The course will also provide students with opportunities to learn how to apply legal knowledge while working in the entertainment industry. Students will learn how to protect citizens’ and organizations’ legal rights in the interests of protecting freedom of speech, the freedom of creativity, and the free development of mass culture. Students will be able to explore the enormous impact of the law upon creative works and will be given the practical skills necessary to succeed in their future careers within the entertainment sphere. They will have the opportunity to examine legal problems arising from the multistage processes of production, distribution, and exhibition of entertainment media products and services, such as TV and movie scripts, recorded programs, songs, concerts, to name just a few. The course curriculum for “Entertainment Law” may be also very useful for future lawyers who wish to deepen their knowledge of legal issues pertaining to the entertainment business.

The course is mainly focused on **entertainment contracts and intellectual property protection**. Through lectures, seminars, and study, students gain knowledge of practical strategies for properly protecting and exploiting rights to creative works. “Entertainment Law” involves the discussion of some arguable questions in the area of copyright, for instance the legal status of TV-formats and the protection of ideas. The course also covers various aspects relating to the regulation of **speech in the entertainment area**, such as the right to privacy, as well as the definition of defamation.

The course “Entertainment Law” provides **a comparative perspective** seeking to compare and contrast legal issues of the entertainment industry in various countries such as Russia, the USA, and Western European countries. The course requires a comparative perspective due to the global character of the distribution of entertainment content today.

The specifics of the entertainment industry and its rapid evolvement accounts for the **practical necessity** of the course. The industry has been changing substantially under the influence of digitalization, the convergence of platforms, and the development of multimedia, among other trends. The entertainment industry is rife with “professionals,” who break the law when producing or using creative content. Consequently, the need for entertainment professionals to gain appropriate legal knowledge is great, and this course has the potential of solving this problem.

2. METHODS OF TEACHING

The course “Entertainment Law” combines **traditional and innovative methods** of teaching. Emphasis is placed on practical tasks, which students perform in the form of games and engaging activities. During the course, students act - individually or in teams - as judges or other legal practitioners working in the entertainment industry. They try to solve significant disputes; they review agreements or deal memos; they participate in negotiations and develop important practical decisions. The author of this course is a legal practitioner, who has been working as a senior lawyer in the entertainment area. She has headed the legal departments of various TV stations and production companies in Russia and is well aware of the practical problems typically arising in the entertainment industry. Thus, she is uniquely qualified with extensive experience, and she applies both traditional and innovative methods of teaching.

3. PLACE OF THE COURSE WITHIN THE MASTER’S PREPARATION PROGRAM

“Entertainment Law” is an **elective course**, and it has been created for Master level students from various faculties regardless of their specialization (the “MAGOLEGO course”). The course has been developed in accordance with:

- NRU-HSE Curriculum;
- Education program 031300.68 Journalism;
- University Academic Plan of the Education Program approved in the year of 2014.

The course “Entertainment Law” is designed for 3 credits. It involves 114 hours, comprising 44 contact hours including 28 lectures and 16 seminars.

4. STUDENT COMPETENCIES TO BE DEVELOPED BY THE COURSE

At the completion of the course “Entertainment Law,” the **students shall**:

- Demonstrate understanding of the legal aspects of the processes of production, distribution, and exhibition of entertainment media products and services;
- Exhibit knowledge of the standard contractual provisions in the entertainment area;
- Be able to assess the provisions of entertainment contracts and show understanding of what should be amended;
- Exhibit knowledge of the process for obtaining rights, as well as of the clearance process for an entertainment project, and of how to deal with author societies;
- Be able to identify the risk of legal claims in the entertainment area;

- Demonstrate understanding of the limitations on the freedom of expression in the entertainment area;
- Display comprehension of the concept of defamation (including defamation of religions);
- Show understanding of the scope of the right to privacy of celebrities.

The Course develops the following **competencies**:

Competencies	NC/NR U-HSE Code	Descriptors - the learning outcomes (the indicators of achievement)	Teaching forms and methods contributing to the development of a competence
Be able to organize personal professional activity according to legal norms and professional duties	ППК-10 (ИК-М 1.2 ПпД)	<ul style="list-style-type: none"> • Exhibit knowledge of the main legal rules in the entertainment industry and perform personal professional activity in compliance with them; • Display knowledge of the standard provisions of the main legal agreements in the entertainment area; • Show knowledge of rights and duties of parties in the entertainment industry; • Show understanding of the specifics of legal issues in the entertainment industry; • Demonstrate ability to review agreements or make reasonable decisions about concluding agreements; • Show ability to respond to deal memos or to draft them; • Display ability to identify breaches of legal rules in the entertainment industry. 	<ul style="list-style-type: none"> • Lectures • Reading literature • Seminars (Case-study, Team projects)
Be able to build professional activity and business and make choices while being guided by principles of social responsibility or public interest as well as being guided by a publicly-oriented mission of	ППК-6 (СЖК –М6)	<ul style="list-style-type: none"> • Exhibit knowledge and understanding of the limits of the freedom of entertainment speech; • Show knowledge and understanding of what public interest is. 	<ul style="list-style-type: none"> • Lectures • Reading literature • Seminars (Case-study, Team projects)

Competencies	NC/NR U-HSE Code	Descriptors - the learning outcomes (the indicators of achievement)	Teaching forms and methods contributing to the development of a competence
professions in mass communications			
Be able to fluently use foreign language including for business communication; can use foreign language knowing not only general lexis but also professional lexis of a personal specialization	ИК-1	<ul style="list-style-type: none"> • Display familiarity with new words in the area of entertainment business; • Demonstrate appropriate English speaking, listening, reading and writing skills in lectures or seminars. 	<ul style="list-style-type: none"> • Lectures • Reading literature • Seminars
Be able to independently obtain and use new knowledge and skills with the use of information technologies including the knowledge and skills in those areas which does not directly associated with a personal professional activities	ИК-2	<ul style="list-style-type: none"> • Exhibit understanding of how the entertainment industry operates; • Show full comprehension of the deal-making process. 	<ul style="list-style-type: none"> • Reading literature • Watching videos
Have communicative competences in business communication, public presentation, and performance, and be able to hold debates and participate in scholarly or expert panel discussions	ИК-4	<ul style="list-style-type: none"> • Show ability to organize and hold negotiations in the entertainment industry; • Display skills at forming arguments, explaining and defending viewpoints on various legal issues in the entertainment industry. 	<ul style="list-style-type: none"> • Seminars (Case-study, Team projects, Discussions)

5. INNOVATIVENESS OF THE COURSE FOR THE RUSSIAN EDUCATIONAL SYSTEM

The course “Entertainment Law” is absolutely **unique** to the Russian higher educational system. At the same time, such courses are successfully run at many **universities abroad**, especially in the USA (for instance, UCLA School of Law, USC Gould School of Law, Harvard Law School, Stanford Law School, etc.) and in the UK (the University of Westminster School of Law). Information gathered about their experience has been taken into account while preparing this curriculum. However, the specifics of the Russian entertainment business has also been taken into consideration. Development of the course “Entertainment Law” is coordinated with the course, “Legal Aspects of the Media,” taught by the same author of this syllabus to Master level students at the Faculty of Communications, Media, and Design of the HSE.

6. COURSE SCHEDULE

№	Title of the topic	Total hours	Contact hours		Self-study
			Lectures	Seminars	
1	Idea submission. TV formats	22	4	4	14
2	Copyright in the entertainment industry	28	8	2	18
3	Deal-making law in the entertainment industry	32	8	6	18
4	Defamation in the entertainment industry	16	4	2	10
5	Privacy in the entertainment industry	16	4	2	10
Total		114	28	16	70

7. COURSE ASSESSMENT

Type of control	Form of control	Module	Department	Parameters
Current (weekly)	Homework assignment	4	Department of Media	Case study
Mid-term	Review	4	Department of Media	Oral exam
Final	Test	4	Department of Media	Written Exam

Grading Criteria

Form	Description
Mid-term review (oral)	Questions of the mid-term test are constructed from the material used in the first half of the course. They require specific answers, which students give in oral form. Every

exam)	correct answer is included in the score. Maximum score (if all the answers are correct) is 10 points. Students are allowed to use dictionaries as well as their notes during the review.
Final	<p>Questions of the final are created from the material from the whole course. This test consists of 3 parts and contains 28 questions. The first part contains questions with an alternative choice, the second part consists of “filling the blanks” questions. The third part has three cases (case study). Students are given 60 minutes to complete the test. Every correct answer is included in the score. Maximum score (if all the answers are correct) is 31 point. When converting the grade into a 10-point grading system to determine the final result, the following formula will be applied.</p> <p>$(\text{Result for the test}) \times 0.33 = \text{Final result}$</p> <p>The final result is rounded up in favor of students.</p>

When student work is assessed, their attendance and participation will be taken into account.

Grading for oral assignments is based upon the following criteria:

- Demonstration of a clear understanding of the material
- Appropriate application of the relevant materials
- Showing of strong support by prudent arguments (including examples)

Cumulative grade according to 10-point system includes the grades for attendance, participation, and the mid-term review. The cumulative grade will be determined in advance of the final exam. It includes percentages for the various activities as follows:

- Attendance – 50%;
- Seminars - 30%;
- Mid-Term Review – 20%;

The formula is: (grade for attendance* 0.5) + (grade for seminars * 0.3) + (grade for the mid-term review * 0.2) = cumulative grade.

When converting the grade into a 10-point grading system to determine the final result, the following formula will be applied.

Final grade is formed as follows:

- Cumulative grade – 50%;
- Final test – 50%.

The formula is: (cumulative grade* 0.5) + (grade for the final exam * 0.5) = final grade.

Resitting for a test is conducted in oral form. Students are not allowed to get additional points to compensate their cumulative grade.

8. COURSE CONTENT

Topic 1	<p>Idea submission. TV formats.</p> <p>Protecting the idea. Contract law as a remedy for story theft. Non-disclosure agreements. Submission release. Implied-in-fact contracts.</p> <p>The legal status of TV formats. The Format Recognition and Protection Association. The ‘bible’ of the TV format.</p> <p>Key cases: the US case of <i>Desny v. Wilder</i>, 1956; the US case of <i>Gunther-Wahl v. Mattel, Inc.</i>, 2002; the Dutch case <i>Castaway v. Endemol</i>, 2004; the Russian case of <i>Guest music Endemol and White Media v. the First TV Channel</i>, Russia.</p> <p>Required reading:</p> <p>Litwak, M. (2009). <i>Dealmaking in the film and television industry</i>. Fresno: Silman-James Press.</p> <p>Kulik, G.L. & Berman, C.S. (2006). Implied-in-fact contracts in the Entertainment Industry. <i>Los Angeles Lawyer</i>, January, p. 10.</p>
Topic 2	<p>Copyright in the entertainment industry.</p> <p>Intellectual property rights in the entertainment industry. Moral rights. Copyrights to works-made-for-hire. Main copyright requirements. Acquiring rights. Derivative works: remakes, remixes, playlists, etc. The duration of copyright and public domain. Copyright registration. Basic elements of third party claims. The doctrines of merger and <i>scenes a faire</i>. Reversion possibility. Co-authorship and collaboration agreements. The fair use doctrine: the main criteria. Parody and fair use. Creative commons, royalty free, and open licenses.</p> <p>Key cases: the US cases of <i>Ets-Hokin v. Skyy Spirits, Inc. et al.</i>, 2003, <i>Leibovitz v. Paramount Pictures Corporation</i> (1998).</p> <p>Required reading:</p> <p>Appleton, D. & Yankelevits, D. (2010). <i>Hollywood Dealmaking: Negotiating Talent Agreements for Film, TV, and New Media</i>. New York: Allworth press.</p> <p>Jain, V. (2013). Work Made for Hire: What It Really Means. <i>The Freelancer</i>, July 9, 2013. Accessed at http://thefreelancestrategist.com/work-made-for-hire-what-it-really-means/4085.</p> <p>Litwak, M. (2009). <i>Dealmaking in the film and television industry</i>. Fresno: Silman-James Press.</p> <p>Smartt, U. (2011). <i>Media and entertainment law</i>. London and New York: Routledge Taylor and Francis Group.</p> <p>Wells, N. How and why to register copyright in your work. <i>Nicolas Wells official blog</i>. Accessed at http://www.wellsiplaw.com/how-and-why-to-register-copyright-in-your-work/.</p>

<p>Topic 3</p>	<p>Deal-making law in the entertainment industry.</p> <p>Pay-or-Play clause. Option contracts: reserved rights, option fees, purchase price, and set-up bonuses. Step deals. Merchandising and product placement deals. Clearance of music rights. Performing Rights Organizations. Option Literary Acquisition Agreement. Literary Acquisition Agreement: key elements. Distribution Agreement: key elements.</p> <p>Key cases: the US case of Wham-O, Inc. v. Paramount Pictures Corp. (2004).</p> <p>Required reading:</p> <p>Appleton, D. & Yankelevits, D. (2010). <i>Hollywood Dealmaking: Negotiating Talent Agreements for Film, TV, and New Media</i>. New York: Allworth press.</p> <p>Litwak, M. (2009). <i>Dealmaking in the film and television industry</i>. Fresno: Silman-James Press.</p> <p>Miller, P. (2003). <i>Media law for producers</i>. 4th ed. Burlington: Focal press.</p>
<p>Topic 4</p>	<p>Defamation in the entertainment industry.</p> <p>Elements of a claim. Libel, slander, and malicious falsehoods.</p> <p>Defamation of persons depicted in literary works. Humor, satire, irony, and defamation.</p> <p>The definition of obscenity. “Miller test.” Art or obscenity?</p> <p>Key cases: the US cases of Unelko v. Rooney (1990), Bindrim v. Mitchell (1979) (Nude Therapy), Lufti v. Spears (2010) (Lynne Spears).</p> <p>Required reading:</p> <p>Litwak, M. (2009). <i>Dealmaking in the film and television industry</i>. Fresno: Silman-James Press.</p> <p>Smartt, U. (2011). <i>Media and entertainment law</i>. London and New York: Routledge Taylor and Francis Group.</p>
<p>Topic 5</p>	<p>Privacy.</p> <p>Balancing the freedom of expression with the right to privacy. Right of publicity. Paparazzi law. Permission to portray people and places. Life rights agreements.</p> <p>Key cases: the US cases of ETW v. Jireh Publishing (2003), Tyne v. Time (2005), the ECtHR case Von Hannover v. Germany (2004).</p> <p>Required reading:</p> <p>Litwak, M. (2009). <i>Dealmaking in the film and television industry</i>. Fresno: Silman-James Press.</p> <p>Smartt, U. (2011). <i>Media and entertainment law</i>. London and New York: Routledge Taylor and Francis Group.</p>

9. EDUCATIONAL TECHNOLOGIES

A Learning Management System (LMS) is used to execute education and control for the course. The course also involves video material.

10. ASSESMENT TOOLS FOR CURRENT CONTROL AND STUDENT GRADING

Topics for the seminars:

- Implied-in-fact contracts: how to protect ideas in the USA
- Submission release: key elements
- Collaboration agreements: key elements
- Creative commons and royalty free licenses: how to use alien content properly
- Music clearance
- Option contracts: key elements
- Literary acquisition agreements: key elements
- Distribution agreements: key elements
- Defamation of persons depicted in literary works
- Life rights agreements: key elements

Proposed questions for the mid-term review:

- What are implied-in-fact contracts? When are they concluded? Which key elements do these contracts have?
- What is a non-disclosure agreement? How it is used to protect ideas? To what extent is it effective for protecting ideas in the entertainment industry?
- What is a submission release? Which key elements does it have? Who gets greater benefits from such a contract? Why?
- What are TV-formats? For what are their “bibles” used? Explain the difference between the protection of ideas and TV-formats.
- What is the main peculiarity for copyrights to works-made-for-hire?
- What are the main copyright requirements in Russia and in the USA?
- What is the duration of copyright in Russia and in the USA?
- What is the difference between copyright registration in Europe and in the USA?
- What are the doctrines of merger and *scenes a faire*?
- When can authors reverse their rights?
- When should authors enter into collaboration agreements? What are the key elements of collaboration agreements?

- What is the fair use doctrine? What is the difference between the main criteria for fair use in Russia and in the USA?
- What are creative commons licenses? Which type of creative commons licenses are you familiar with? What is the difference between creative commons and royalty free licenses? What are open licenses? Why should users be careful with the content placed under creative commons, royalty free, or open licenses? Which websites with the content placed under creative commons licenses can you recommend?

11. READING

11.1. General Reading

1. Appleton, D. & Yankelevits, D. (2010). *Hollywood Dealmaking: Negotiating Talent Agreements for Film, TV, and New Media*. New York: Allworth press.
2. Litwak, M. (2009). *Dealmaking in the film and television industry*. 3rd ed. Fresno: Silman-James Press
3. Miller, P. (2003). *Media law for producers*. 4th ed. Burlington: Focal press.
4. Smartt, U. (2011). *Media and entertainment law*. London and New York: Routledge Taylor and Francis Group.

11.2. Advanced Reading:

1. Amponsah, P. (2004). *Libel Law, Political Criticism, and Defamation of Public Figures: The United States, Europe, and Australia*. New York: LFB Scholarly Publishing LLC.
2. Baden-Powell, E., Bleakley, A., Eneberi, J. (2010). *Intellectual Property and Media Law Companion*. Great Britain: Bloomsbury Prof.
3. Elst, M. (2005). *Copyright, freedom of speech, and cultural policy in the Russian Federation*. Leiden: Koninklijke Brill N.V.
4. Goldfarb, R. (2009). *In Confidence: When to Protect Secrecy and When to Require Disclosure*. New Haven: Yale University Press.
5. Gordon S. (2008). *The Future of the Music Business. How to Succeed with the New Digital Technologies. A Guide for Artists and Entrepreneurs*. 2nd ed. San Francisco: Backbeat Books.
6. Jain, V. (2013). Work Made for Hire: What It Really Means. The Freelancer, July 9, 2013. Accessed at <http://thefreelancestrategist.com/work-made-for-hire-what-it-really-means/4085>.
7. Harrison A. (2008). *Music: The Business. The Essential Guide to the Law and the Deals*. 4th ed. London: Virgin Books.
8. Kearns, P. (2000). Obscene and Blasphemous Libel: Misunderstanding Art. *Criminal Law Review*, Aug., pp. 652-660.

9. Kulik, G.L. & Berman, C.S. (2006). Implied-in-fact contracts in the Entertainment Industry. *Los Angeles Lawyer*, January, p. 10.
10. Moran, A., Malbon, J. (2006). *Understanding the Global TV Format*. Bristol: Intellect Ltd.
11. Passman, D. (2008). *All You Need to Know about the Music Business*. 6th ed. London and New York: Penguin,
12. Rolph, D., Beveridge, F., Velluti, S. (2008). *Reputation, Celebrity and Defamation Law*. Oxon: Ashgate Publishing Group.
13. Schilling, K. (1991). Privacy and the Press: Breach of Confidence – the Nemesis of the Tabloids? *Entertainment Law Review*, 2(6), pp. 169-176.
14. Sezneva, O. (2012). The Pirates of Nevskii Prospekt: Intellectual Property, Piracy and Institutional Diffusion in Russia, *Poetics*, 40, pp. 150-166.
15. Tarleton, G. (2007). *Wired Shut : Copyright and the Shape of Digital Culture*. Cambridge, MA.
16. Wells, N. How and Why to register copyright in your work. *Nicolas Wells official blog*. Accessed at <http://www.wellsiplaw.com/how-and-why-to-register-copyright-in-your-work/>.