

CARLETON UNIVERSITY
Department of Law and Legal Studies

Course Outline – DRAFT (final version on CULearn)

COURSE:	LAWS 3202 – Intellectual Property
TERM:	Fall 2013
PREREQUISITES:	1.0 credit from LAWS 2201, LAWS 2202, LAWS 2501, LAWS 2502
CLASS:	Mondays 8:35 – 11:25 am Please check Carleton Central for current room location
INSTRUCTOR:	Professor Sheryl Hamilton
OFFICE HOURS:	Thursdays 9:30 am – 12:00 pm (or by appointment)
CONTACT:	Sheryl_hamilton@carleton.ca Phone: X 1178 and X1975

COURSE OBJECTIVES AND CONTENT

From movie file-sharing, to patenting human genes, to trademarking the colours of the spectrum, to the design of your coffee machine, intellectual property issues are all around us. It is not hyperbole to suggest that this is the single-most exciting time in history to be studying intellectual property. Intellectual property issues pepper our daily media, the blogosphere, and the parliamentary agenda. These disputes shape our mediascape, our healthcare system, our built environment and the global economy. That intellectual property laws and policies are framed by different commercial, public and private actors affects our access to creative works, new and useful products, and quality brands of products and services we rely upon to make our lives possible and meaningful. As Edwin Hettinger has noted, “[p]roperty institutions fundamentally shape a society.” In this way, studying intellectual property is very much the study of what kind of society we have, what kind of society we are becoming, and what kind of society we want.

In this course, we will study the political and philosophical rationales for protecting intellectual property, the fundamentals of the major areas of intellectual property in Canada, and the social, political, economic and cultural issues that are at the heart of contemporary struggles over intellectual property in Canada and around the world.

REQUIRED READING

A majority of readings can be obtained online through the Carleton Library and/or through the included weblinks. Readings not available in this matter will be placed on CULearn.

EVALUATION

Students will be evaluated in the following areas:

1. Participation (15%)
2. Two Discussion Piece Analyses (15% each X 2 = 30%)
3. Intellectual Property Journal (30%)
4. Final Examination (25%)

The requirements for each assignment will be discussed on the first day of class, with supplementary information to be provided as necessary throughout the course. If, at any time, you have questions about any element of an evaluation, please speak to me as soon as possible. Failure to complete the Intellectual Property Journal or the Final Examination will result in a final grade of F.

Please note that all assignments must be typed or word-processed and submitted in hard copy. Handwritten papers, computer files, or e-mail attachments will not be accepted. Please retain a photocopy or secure file copy of the submitted work. In the event of loss, theft, destruction, dispute over authorship, or any other eventuality, it will be your responsibility to provide a copy of your work. I also recommend that you keep earlier drafts of your work and/or your research material.

Participation

Students are expected to attend all classes, respect the start and finish times of the class, read the required readings and discussion pieces in advance of the class for which they are assigned, and come to class prepared to identify and discuss issues emerging from these in a thoughtful and informed manner. The participation grade will also assess students' level of engagement in the classroom, the quality of participation in classroom activities, and the ability to bring concepts, critiques and ideas from the readings into classroom discussion.

Mobile communication devices should remain turned off and stored in a purse, book bag, pocket, etc. during class time, except for laptops being used for note-taking purposes. Repeated use of mobile communication devices for non-academic purposes will result in a grade of 0 for participation.

Attendance will be taken at every class. However, good attendance is a prerequisite for a good participation grade, not an equivalent to it. Participation is about respect, engagement, and working productively in a collaborative manner to enhance your own and others' learning. Students are encouraged to ask questions, share experiences, and relate course material to issues they see around them in their everyday lives.

Discussion Piece Analyses

Students will note that certain readings/websites/videos etc. have been designated each week as Discussion Pieces (DPs). Over the course of the term, each student is to submit two (2) critical analyses (3-5 double-spaced, typed pages) of two different DPs. The DP should be critically analyzed in relation to the other readings for that week (and any other relevant course material from previous weeks). No further research is required; however, you are required to use the relevant readings.

When thinking critically about the DP, you should be guided by the following questions. Please note that these questions are only prompts to your critical evaluation of the material. Not all questions will work equally well for all types of DP's and your analyses should not merely be answers to those questions.

- who/what is the author of the DP and where was it published? How do those factors effect the content, style, and argument of the DP?
- in what medium is the DP and how does that shape it?
- is the genre of the DP relevant and if so, how?
- how are you as the reader being addressed?
- what assumptions is the author making about the nature of property? Of consumers/users? Of creators? Of the economy? Of society? Of the public interest? Etc.
- what are the assumptions made in the piece about who holds power and who does not?
- what is the nature of the problem that the author is trying to address with their piece?
- is the DP persuasive? Why or why not? Does the author mobilize convincing evidence for her or his claims?

Each Discussion Piece Analysis (DPA) will be due at the beginning of the class when we are discussing those materials. These assignments will not be accepted late. If you miss the deadline, you should complete a DPA for another week.

Please note that only one DPA will be accepted for the weeks on copyright, trademark or patent; for example, you may not do both of your DPAs on the theme of patents.

Intellectual Property Journal

You will be asked to prepare an Intellectual Property Journal. Select one type of intellectual property. For a period of 3 days, you should keep a log of the intellectual property encounters that you have, focusing on that one type of intellectual property. Think about all of the ways that you use and interact with objects, products, and activities that implicate that form of intellectual property.

For example, you might choose to focus on trademarks. When your iPhone alarm wakes you up, you note that your iPhone is a branded object with a distinctive logo. When you get dressed, you will note that you are putting on your Gap jeans, your Banana Republic Shirt and your BCBG sweater – each of which is a trademark (and brand). When you dig out your breakfast cereal, the

colour, logo, tagline, animated character, name of the cereal, etc. may all be subject to trademarks. And so on for the rest of the day. Continue this for three days.

Take 'field notes' on these experiences, recording what are the instances of that form of IP, where and when you encountered them, what you were doing at the time, any questions that come to you, how you may be using or 'abusing' this form of IP, issues you recognize, and your feelings in response to your encounters. You should keep your field notes in a notebook that will be submitted with your analysis.

Once you have completed your three days of focused observation, you should review your notes and prepare an analysis of your experience of this heightened recognition of your interactions with intellectual property. At a minimum, please address the following questions (in essay format):

- Why did you select that type of intellectual property?
- How did you define that type of intellectual property?
- Was this type of intellectual property easy to recognize in your daily life? Why or why not?
- Did you encounter many instances of it? Were these more or fewer encounters than you anticipated?
- Are there any identifiable patterns to where, when and why you encountered this type of IP? What do those patterns mean?
- Is your experience with this type of IP shaped at all by differences between the private and public spheres?
- Are there any discernible patterns in the ownership, use, and economic, legal or social relations evident in your journal notes?
- What critical issues did your experience of attending to this type of IP in a more focused way suggest to you and what can you say about those issues?
- How would you characterize yourself as a user of this type of IP?
- What is your overall impression of the place of this type of intellectual property in your every day life?

You should develop your discussion of the critical issues related to your focused experience of IP with reference to a minimum of three peer reviewed academic sources.

Reviews should be 8-10 double-spaced pages (exclusive of any bibliography) and are due on **November 4, 2013**.

Final Examination

There will be a three-hour final examination in the regularly scheduled examination period. It will be three hours and will examine students on their integrated and critical knowledge of all course materials – lectures, readings and discussions. It will be comprised of definitions, short answer and essay questions. The exam will be discussed in more detail on the last class during the examination review.

Academic Integrity and Plagiarism

All assignments that you complete must be your original work. Please review the student Academic Integrity Policy <http://www2.carleton.ca/studentaffairs/academic-integrity>. You are responsible for conduct in accordance with the policy.

The University Senate defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This can include:

- reproducing or paraphrasing portions of someone else’s published or unpublished material, regardless of the source, and presenting these as one’s own without proper citation or reference to the original source;
- submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings;
- failing to acknowledge sources through the use of proper citations when using another’s works and/or failing to use quotation marks;
- handing in "substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs."

Plagiarism is a serious offence which cannot be resolved directly with the course’s instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of "F" for the course.

Policy on Late Work

All assignments are to be turned in to the Professor at the beginning of the class in which they are due. With the exception of the DPAs, late assignments will be marked down one-third letter grade (e.g. from B to B-) for each day they are submitted after the due date without a medical note. All extensions for medical reasons require written proof from an appropriate healthcare professional.

SPECIAL NEEDS

Students Requiring Formal Accommodation

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details visit the Equity Services website: <http://www2.carleton.ca/equity/>

Academic Accommodations for Students with Disabilities: The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your *Letter of Accommodation* at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://www2.carleton.ca/pmc/new-and-current-students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://www2.carleton.ca/equity/>

Other Special Needs

If you have any other special needs which require scheduling accommodation for you to maximize your learning experience (e.g. employment, childcare, travel, etc.) and for which formal accommodations are not available, please speak to me at the beginning of term so that we can arrange a mutually satisfactory approach. Do not expect this type of accommodation for such requests during the week in which an assignment is due if we have not already arranged it.

SCHEDULE OF READINGS AND LECTURES:

September 9 Introduction

September 16 What is Intellectual Property and Why do we Protect It?

Hettinger, Edwin C. (2001), "Justifying Intellectual Property" in *Philosophy and Public Affairs* (John Haldane, ed.), New York: Cambridge University Press, pp. 31-52 --
<http://www3.nccu.edu.tw/~adali/hettinger.pdf>

Boyle, James (2002), "Fencing off ideas: enclosure and the disappearance of the public domain" in *Daedalus* 131(2): 13-25 at <http://james-boyle.com/daedalus.pdf>

Discussion Piece: Please watch the series of FBI Public Service Announcements (The Flea Market, The Rip Off, Toxic Meds, Vanishing Band, and Trade Secrets) --

http://www.youtube.com/watch?v=f_XZNFjjK-c&list=PL_kAiN4FbpOuZE6VrUPre_phr1t4t-fD3

September 23

Enclosing the Public: Copyright I

Martin, Brian (1995), "Against Intellectual Property." *Philosophy and Social Action* 21(3): 7-22 –

<http://www.uow.edu.au/~bmartin/pubs/95psa.html>

Himma, Kenneth E. (2008), "Justifying Legal Protection of Intellectual Property: The Interests Argument" in *SIGCAS Computers and Society* 38(4): 13-27 – <http://www.deepdyve.com/lp/association-for-computing-machinery/justifying-legal-protection-of-intellectual-property-the-interests-dnCg4GWTfY>

Discussion Piece: Doctorow, Cory (2010), "What do we want copyright to do?" in *The Guardian*, November 23 --

<http://www.theguardian.com/technology/2010/nov/23/copyright-digital-rights-cory-doctorow>

September 30

'Whacking the Mole': Copyright II

Bilton, Nick (2012), "Internet Pirates Will Always Win" in *The Sunday Review* of *The New York Times*, August 4, 2012

at <http://www.nytimes.com/2012/08/05/sunday-review/internet-pirates-will-always-win.html?ref=thepiratebay&r=2&>

Andersson, Jonas (2009), "For the Good of the Net: The Pirate Bay as a Strategic Sovereign" in *Culture Machine*, 10: 64-108 --

<http://www.culturemachine.net/index.php/cm/article/view/346/359>

Discussion Piece: Klose, Simon (dir.) (2013), *TPB AFK: The Pirate Bay Away from the Keyboard* – documentary about the Pirate Bay copyright infringement trial -- <http://watch.tpbfk.tv/>

October 7

Marks of Distinction in Brand Culture: Trademark I

Nel, Philip (2003), "The Disneyfication of Dr. Seuss: Faithful to Profit, One Hundred Percent?" in *Cultural Studies* 17(5): 579-614 –

<http://journalonline.tandf.co.uk.proxy.library.carleton.ca/openurl.asp?genre=articles&issn=0950-2386&volume=17&issue=5&page=579>

Elliott, Charlene (2001), "Consuming Caffeine: The Discourse of Starbucks and Coffee" in *Consumption, Markets and Culture* 4(4): 369-381 –

<http://www.crito.uci.edu/noah/CMC%20Website/CMC%20PDFs/CMC44.pdf>

Discussion Piece: Orozco, David and James Conley (2008), “The Shape of Things to Come” in *The Wall Street Journal Online* --
<http://online.wsj.com/article/SB121018802603674487.html>

October 14 **Happy Thanksgiving!**

October 21 **Property in the Senses: Trademark II**

Roth, Melissa E. (2005-6), “Something Old, Something New, Something Borrowed, Something Blue: A New Tradition in Nontraditional Trademark Registrations” in *Cardozo Law Review* 27: 45 --
<http://www.cardozolawreview.com/Joomla1.5/content/27-1/ROTH.FINAL.VERSION.pdf>

Elliott, Charlene (2006), “Colour™ and the Sensory Scan” in *MCJ: A Journal of Media and Culture* 8(4) – <http://journal.media-culture.org.au/0508/06-elliott.php>

Discussion Piece: Bhasin, Kim (2012), “Can you identify these 12 brands by their trademarked colour?” in *Business Insider* (February 1, 2012) --
<http://www.businessinsider.com/can-you-identify-these-12-brands-by-their-trademarked-colors-alone-2012-2#>

October 28 **Fall Break**

November 4 **Author(izing) the Celebrity: Appropriation of Personality**

Hearn, Alison (2008), “Meat, Mask, Burden”: Probing the Contours of the Branded ‘Self’” in *Journal of Consumer Culture* 8(2): 197-217 --
http://uwo.academia.edu/AlisonHearn/Papers/1153658/Meat_mask_burden_Probing_the_contours_of_the_branded_self

Discussion Piece: Gurney, Matt (2012), “Matt Gurney on the Tupac Hologram: Let Dead Celebs Rest. Or at Least Decide” in *National Post* (April 23, 2012) – <http://fullcomment.nationalpost.com/2012/04/23/matt-gurney-on-the-tupac-hologram-let-dead-celebrities-rest-or-at-least-decide/>

November 11

Inventors, Investors, and Citizens: Patents I

Biehl João (2004), "Global Pharmaceuticals, AIDS, and Citizenship in Brazil" in *Social Text* 80, 22(3): 105-132 -- http://joaobiehl.net/wp-content/uploads/2009/07/Biehl-2004-Social_Text.pdf

Greene, Shane (2004), "Indigenous People Incorporated? Culture as Politics, Culture as Property in Pharmaceutical Bioprospecting" in *Current Anthropology* 45(2): 211-37 -- <ftp://ftp.ige.unicamp.br/pub/CT001%20SocCiencia/Agosto%2016/Greene%202004.pdf>

Discussion Stiglitz, Joseph E. (2013), "How Intellectual Property Reinforces Inequality" in *The New York Times*, July 14 -- <http://opinionator.blogs.nytimes.com/2013/07/14/how-intellectual-property-reinforces-inequality/>

November 18

Biopatents/Biopolitics: Patents II

Robertson, Sean (2005), "Re-Imagining Economic Alterity: A Feminist Critique of the Juridical Expansion of Bioproperty in the Monsanto Decision at the Supreme Court of Canada" in *University of Ottawa Law and Technology Journal* 2(2): 227-253 -- <http://www.uoltj.ca/articles/vol2.2/2005.2.2.uoltj.Robertson.227-253.pdf>

Prudham, Scott (2007), "The Fictions of Autonomous Invention: Accumulation by Dispossession, Commodification, and Life Patents in Canada" in *Antipode* 39(3): 406-429 -- <https://tugs.geog.utoronto.ca/people/faculty/prudham/home/publications/FictionsofAutonomousInventionproof.pdf>

Discussion Piece: Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902 (S.C.C.) -- <http://scc.lexum.org/en/2004/2004scc34/2004scc34.html>

November 25

Communicating the Built Environment: Industrial Design

Nickles, Shelley (2002), "Preserving Women: Refrigerator Design as Social Process in the 1930s" in *Technology and Culture* 43 (October): 693-727 -- http://muse.jhu.edu.proxy.library.calreton.ca/journals/technology_and_culture/v043/43.4nickles.html

WIPO (2006), *Looking Good: An Introduction to Industrial Design for Small and Medium-sized Enterprises* --
http://www.wipo.int/freepublications/en/sme/498/wipo_pub_498.pdf

Discussion Piece: Carr, Austin, (2011), “How Much Can Asus, HP, And Others Rip Off Apple's Designs?” at Fast Company
<http://www.fastcompany.com/1801211/how-much-can-asus-hp-and-others-rip-apples-designs>

December 2

Shhhh, Don't Tell: Trade Secrets

Vaver, David (1990), “What is a Trade Secret?” in *Trade Secrets* (R.T. Hughes, ed.), pp. 1-41.

WIPO (2002), “Trade Secrets: Policy Framework and Best Practices” in *WIPO Magazine*
at http://www.wipo.int/sme/en/documents/wipo_magazine/05_2002.pdf

Discussion Piece: Schreiner (2009), “KFC Stores Colonel's Secret Recipe in New, Safer Vault” in *The Huffington Post* (November 2) --
http://www.huffingtonpost.com/2009/02/10/kfc-stores-colonels-secre_n_165630.html

December 9

Wrap-up and Examination Review