

CARLETON UNIVERSITY
Department of Law and Legal Studies

Course Outline

COURSE:	LAWS 3202 – Intellectual Property
TERM:	Summer 2012
PREREQUISITES:	1.0 credit from LAWS 2201, LAWS 2202, LAWS 2501, LAWS 2502
CLASS:	Tuesdays and Thursday, 9:05 am – 11:55 am Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Sheryl Hamilton
OFFICE HOURS:	Tuesdays 12:15 – 2:00 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 newspapers, the blogosphere, and the parliamentary agenda. These disputes shape our mediascape, our healthcare system, and our built environment. 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. Any readings not available digitally have been placed on reserve at the MacOdrum library.

EVALUATION

Students will be evaluated in the following areas:

1. Participation (15%)
2. Two Discussion Piece Analyses (15% each X 2 = 30%)
3. Analytic Book Review (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 Analytic Book Review 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, the lecture, class discussion, and any other relevant course material that we have covered. No further research is required.

Each Discussion Piece Analysis (DPA) will be due at the beginning of the following class. These assignments will not be accepted late. If you miss the deadline, you should complete a DPA for another week and submit it in accordance with that deadline. Please note that only one DPA will be accepted for the weeks on copyright, trademark or patent; in other words, you may not do both of your DPAs on the theme of patents, for example.

Analytic Book Review

Students will be asked to prepare an analytic book review of one of the following books. (Alternative books may be proposed, in writing, for approval up to two weeks before the due date). Reviews should be approximately 10 double-spaced, pages. Not more than 1 page should be spent describing the content of the book and whether or not you “liked” the book or not should not be your focus. Direct your analysis to critically thinking about the arguments of the author. Consider the underlying assumptions of the author (for example, how is she conceptualizing users, citizens, the nation, or industrial players? What is he assuming about the nature of intellectual property, law or “the market”? What is her understanding of how social power is organized? What is he defining as the “problem” which needs to be solved? What is her latent understanding of the relationship between technology, culture and law? And so on.) You should also consider the nature of the evidence and argumentation of the author and how effective it is (regardless of whether or not you agree with her or his position). Ask yourself what else the author might have considered. The Analytic Book Review will be due on **Tuesday, June 19, 2012.**

Possible books include:

Boldrin, Michele and David K. Levine (2008) *Against Intellectual Monopoly*. Cambridge: Cambridge University Press.

Boyle, James (2010), *The Public Domain: Enclosing the Commons of the Mind*, Yale University Press.

Johns, Adrian (2009), *Piracy: The IP Wars from Gutenberg to Gates*, Chicago: University of Chicago Press.

Kembrew McLeod (2007), *Freedom of Expression: Resistance and Repression in the Age of Intellectual Property*, Minneapolis: University of Minnesota Press.

Lessig, Lawrence (2008), *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, New York: Penguin.

Reyman, Jessica (2010), *The Rhetoric of Intellectual Property: Copyright Law and the Regulation of Digital Culture*, London and New York: Routledge.

Vaidhyathan, Siva (2001), *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity*, New York: NYU Press.

Final Examination

There will be a three-hour final examination in the regularly scheduled examination period. It 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 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 because of disability, pregnancy or religious obligations. Please review the course outline promptly and 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.

Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities could include but are not limited to mobility/physical impairments, specific Learning Disabilities (LD), psychiatric/psychological disabilities, sensory disabilities, Attention Deficit Hyperactivity Disorder (ADHD), and chronic medical conditions. Registered PMC students are required to contact the PMC, 613-520-6608, every term to ensure that your Instructor receives your Letter of Accommodation, no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you only require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by **June 8, 2012**.

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

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:

May 8 Introduction

May 10 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://links.jstor.org/sici?sici=0048-3915%28198924%2918%3A1%3C31%3AJIP%3E2.0.CO%3B2-O>

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 review the website <http://americancensorship.org/> in relation to the *Stop Online Piracy Act* (SOPA) currently being debated in the United States.

May 15 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-dnCc4GWTfY>

Discussion Piece: Lessig, Lawrence (2008), *Remix Culture: Making Art and Commerce Thrive in the Hybrid Economy*, New York: Penguin, Read preface and introduction at <http://www.scribd.com/doc/18096155/Remix-Culture-Lawrence-Lessig>

May 17 Publics, Politics and Property: Copyright II

van Dijck, José (2009), "Users like you? Theorizing agency in user-generated content" in *Media Culture and Society* 31(1): 41-58 -- <http://www2.le.ac.uk/departments/media/dl/documents-and-pdfs/course-readers/penm/UsersLikeYou.pdf>

Halbert, Debora (2008-9), "Mass Culture and the Culture of the Masses: A Manifesto for User-Generated Rights" in *Vanderbilt Journal of Entertainment and Technology Law* 11: 921-961 -- <http://www.jetlaw.org/wp-content/journal-pdfs/Halbert.pdf>

Discussion Piece: Petersen, Soren Mork (2008), "Loser Generated Content: From Participation to Exploitation in *First Monday* 13(3) (March) <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/2141/1948>

May 22 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/CMC4_4.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>

May 24 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/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#>

May 29 Author(izing) the Celebrity: Appropriation of Personality

Cordero, Steven M. (2006), “Cocaine-Cola, the Velvet Elvis, and Anti-Barbie: Defending the Trademark and Publicity Rights to Cultural Icons” in *Fordham Intellectual Property, Media & Entertainment Law Journal* 89: 599-654 –
<http://law.fordham.edu/publications/articles/200flspub668e.pdf>

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/>

**May 31 Professor is away for a conference
Class is cancelled**

June 5 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

Elmer, Thomas and Susanne Lütz (2010), “Developmental States, Civil Society and Public Health: Patent regulation for HIV/AIDS pharmaceuticals in India and Brazil” in *Regulation and Governance* 4(2): 135-153 – through Carleton library online journals.

Discussion Piece: Wilson, Duff (2011), “Drug Firms Face Billions in Losses in /11 as Patents End” at *Office of Medical and Scientific Justice* -- <http://www.omsj.org/pharmaceutical/drug-firms-face-billions-in-losses-in-'11-as-patents-end>

June 7 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 -- <http://www.forumonpublicdomain.ca/sites/forumonpublicdomain.ca/files/Prudham,%20Fictions%20of%20Autonomous%20Invention.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>

June 12 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: Please review the website of the International Council of Societies of Industrial Design at <http://www.icsid.org/> Please pay particular attention to their World Industrial Design Day activities.

June 14 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

June 19 Wrap-up and Examination Review