

Course Outline

COURSE:	LAWS 3202 A – Intellectual Property
PREREQUISITES:	1.0 credit from LAWS 2201, LAWS 2202, LAWS 2501, LAWS 2502
TERM:	Winter 2013
CLASS: Day & Time:	Mondays 18:05 – 20:55
Room:	Please check Carleton Central for current room location
INSTRUCTOR:	R. Prasad
CONTACT: Office:	B 442 Loeb
Office Hours:	TBD, & by appointment
Telephone:	none – please use email
Email:	laws3202@yahoo.ca

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/>

COURSE DESCRIPTION

Once an esoteric domain of property law, intellectual property law (“IP”) is now one of the most publicized and challenging legal frontiers that is actively shaping technology and social policy in Canada and around the globe. Our society continues to become more dependent on technology, information and consumption. National economies have been shifting from manufacturing to globalized knowledge-based products. IP law and policy are becoming more daily concerns for everyone, not just for lawyers, corporations, national governments, and politicians. Each day there is a new major patent, copyright, or trademark lawsuit making property claims that could have serious effects on rights you think you have and activities you take for granted. Your freedom to obtain and enjoy basic commercial and cultural products such as computers, smartphones, software, music, movies, media, fashion, food, drugs and medical technology are changing. The way IP laws and policies are framed by different commercial, public and private actors affects our access to artistic works, new and useful products, and

quality brands of products and services we rely on to make our lives possible and meaningful. Demographic changes, technological advances, and capitalist interests create new legal challenges with important social implications – are our national and international IP laws reflecting those changes accurately and fairly?

LAWS3202 is an intensive basic introduction and overview to the history, premises, statutory framework and social context surrounding different types of intellectual property law in Canada. It explores law and policies that govern our copyright, trademark, patent, trade secret, right of personality, industrial design protection, and integrated circuit topography regimes in Canada, as well some US and international law. The course begins with a review of traditional understandings of property, statutory privilege, fundamental concepts such as 'idea vs. expression,' and the reciprocal tension between private vs. public interests, creator/owners vs. consumers/users at the center of many lawsuits and changing public perceptions. Readings and lectures review core areas of intellectual property law through critical analysis of case law, social and legal policy articles, news stories, and critiques of IP law, policy and trends. The course will touch on the ways IP regulates various social concerns such as biodiversity, access to medicines, ethics, traditional knowledge, corporate power & strategy, technological primacy, and globalization.

2012 saw some major changes in the IP landscape both in Canada and the USA, and we will see their effects soon. Amid ongoing calls for IP reform, Canada passed a significant amendment to the copyright law in the fall, and content owners are already tracking IP address and positioning themselves to file lawsuits against file sharers. The US Supreme Court is considering the nature of intellectual property ownership in copyright and patent in two major cases this term. If you surf the internet, download music, do research for school, or depend on technology of any kind, intellectual property law affects you. Are IP laws essential to protect creativity and incentivize innovation, or are they just glorified corporate welfare that protect outdated business models and inhibit cultural progress? This course introduces the core concepts, cases, controversies and contexts so you can better decide for yourself.

REQUIRED READINGS

The course is structured around lectures and complementary readings you must read before each class. This outline/reading list along with any updates will be posted on WebCT. Many readings are available online via the internet or electronic journal archives via campus proxy server. Other readings may be on reserve in the library.

A course-pack of readings for the course will also be available for purchase from Haven Books. (43 Seneca Street, corner of Sunnyside & Seneca, 5 minutes walk from campus, 613-730-9888) Additional course materials, updates, information and links to readings will be discussed in class and posted on WebCT.

EVALUATION PROCEDURES

Two Short Topic Review & Analyses (2 x 10% each = 20%),
Case Application/Commentary (30%)
Final Examination (50%).

The requirements for each assignment will be discussed on the first day of class and as necessary throughout the course. If, at any time, you have questions about any element of evaluation, please speak to me. **By departmental regulation, failure to complete an assignment or the final examination will result in a final grade of F.** There will be no supplemental examination or grade raising assignments in this course. Exams are not returned but may be reviewed with the instructor by appointment.

Late papers will be marked down one-half letter grade (e.g. B to B-) for each day submitted after the due date without an authorized extension from Instructor. All extensions for medical reasons require written proof from a healthcare professional. Papers must be typed or word-processed and submitted in hard copy. Handwritten papers, computer files or email attachments will not be accepted. Please retain a photocopy or a secure file copy of the submitted essay. Papers must be submitted in person to the course instructor or deposited in the essay drop box located outside the Law Department General Office room C473 Loeb Building on the due date. The Department of Law assumes no responsibility for essays or assignments submitted in an irregular manner. Completed assignments not picked up in class may be picked up from the instructor during office hours or returned by post where a stamped self-addressed envelope is provided.

All assignments must be original. Please note all University regulations concerning plagiarism and related instructional offences (see appropriate section of current Undergraduate Calendar for minimum stipulations). In a third year law-oriented university course about intellectual property, originality, free-riding, plagiarism and negligent attribution are especially serious issues – please don't short cut: you don't learn anything and you risk too much.

Attendance & Participation:

Students are expected to attend all classes and do required readings/discussion pieces prior to class. Please be prepared to participate in class to identify and discuss issues in a thoughtful and informed manner. Class slides will not be posted online.

Topic Reading Analyses:

Over the course of the term, each student is to submit two (2) critical analyses (4 - 5 double-spaced pages only) of two different class topics (not to be selected from the same theme (i.e. don't do two papers on copyright)). Each reading should be analyzed in relation to the other readings in that topic, including lectures, class discussion and any other relevant course readings. No further research is required. One topic reading analysis will be due in each half of the term, usually the week after the class in which we have completed a section. Additional guidelines and research guidance materials will be discussed in class. If you do not submit by the deadline for that topic you must choose another. These will not be accepted late. As with any upper-year university law course, grammar, spelling, originality, attribution, clarity and quality of the analysis papers will count.

Applied Case Study/Commentary:

Students will complete a written case analysis assignment requiring them to identify, explain and comment on IP concepts as they are applied in a real world context. Typically this will involve analysis of an existing product or case involving IP rights. The analysis or case comment will give students an opportunity to apply the law and concepts discussed in class and write a short critical analysis of the social, legal, cultural, and/or political questions around the intellectual property issues that might arise in a real-world context. The assignment will typically be 4-6 pages in length, 12pt font, double-spaced. As with any upper-year course, grammar, spelling, originality and quality of research essay papers will count. Collaborative, outsourced and/or professionally edited papers will be given a failing grade and a report of academic misconduct. Due date is TBD, usually 1-2 weeks before the exam.

Final Examination:

There will be a three (3) hour final examination in the regularly scheduled examination period. It will examine students on their integrated and critical knowledge of all course material – lectures, readings and discussions. It will be comprised of definitions, short answers and essay questions. The exam will be discussed in more detail during the review class.

SPECIAL NEEDS:

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

(Go to next page for additional information)

SCHEDULE OF READINGS AND LECTURES

This Winter 2013 outline & readings/topic list is subject to reasonable changes. NOTE: Embedded article links were current at the time of creation of this list. Many journal article links are accessible only if you are logged in on campus wifi or via the library proxy server. If you cannot download an article, come to campus and/or just web search/google the title.

Class 1: Meet-n-Greet

- General introduction to course, overview of aims, outline, evaluation, logistics, materials, questions.

Class 2: Introduction to Intellectual Property Concepts

- History, review of basic “intellectual” and “property” concepts, justification paradigms etc.

Readings

- Mossman, MJ & Flanagan, W. (2004) *Property Law: Cases and Commentary 2nd ed*, p.1-5 [book]
- Gervais, D., and Judge, E. (2005) “Introduction to Intellectual Property: Philosophy, Policy and History” in *Intellectual Property: The Law in Canada*, Chapter 1, p.1-5 [book chapter, not on web]
- Boyle, James (2002), “Fencing off ideas: enclosure & the disappearance of the public domain” in *Daedalus* 131(2): 13-25. ISSN: 0011-5266 <http://james-boyle.com/daedalus.pdf>
- Hettinger, Edwin C. (1989), “Justifying Intellectual Property” in *Philosophy and Public Affairs* (John Haldane, ed.), New York: Cambridge University Press, Vol 18(1), pp. 31-52. ISSN: 0048-3915

Class 3: IP Concepts (Continued) + Copyright Introduction

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- Works, fixation, originality, use, economic v. moral rights, regime expansion, US law

Legislation

Copyright Act (R.S.C., 1985, c. C-42): <http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html>

Copyright Modernization Act (S.C. 2012, c. 20): http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_20/index.html

Readings

- Gervais, D., and Judge, E. (2005) “Copyright” in *Intellectual Property: The Law in Canada*, Chapter 2, p.7-25 [book chapter, not on web]
- Gladwell, Malcom “Something Borrowed: Should a charge of plagiarism ruin your life?” in *The New Yorker* (November 2004) http://www.gladwell.com/2004/2004_11_25_a_borrowed.html
- Khanna, D. (2012) *RSC Policy Brief: Three Myths about Copyright Law and Where to Start to Fix it*

Class 4: Copyright II

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- Works, fixation, originality, use, economic v. moral rights, regime expansion, US law

Readings

- Lai, A. (2011) *The Death of the Author: Reconceptualizing 60 Years Later: Coming Through the Rye as Metafiction in Salinger v. Colting*, USF Intellectual Property Law Bulletin (online)
- Lawrence Lessig, “Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity”, (New York: The Penguin Press, 2004), at pp. 53-61, 183-207
- [blog: web only] Michael Geist: (Oct. 01 2011) “[Why Canada's New Copyright Bill Remains Flawed](http://www.michaelgeist.ca/content/view/6038/159/)” <http://www.michaelgeist.ca/content/view/6038/159/>; (Nov. 13 2012) “What the New Copyright Law Means For You” <http://www.michaelgeist.ca/content/view/6695/135/>
- [blog: web only] Barry Sookman: (Oct. 03 2011) “[Some observations on Bill C-11: The Copyright Modernization Act](#)”; (Nov. 07 2012) “[Change and the Copyright Modernization Act](#)” [see WebCT or cuLearn for updates to the blog readings]

Class 5: Copyright III

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- Works, fixation, originality, use, economic v. moral rights, regime expansion, US law

Readings

- Patry, W., (2009), “Moral Panics and the Copyright Wars,” Chapter 6: Why Classifying Copyright as Property Is Important in the Copyright Wars, p. 109-132 [book chapter, not on web]
- Landes, W., and Posner, R. (2003), “How to Think about Copyright” in *The Economic Structure of Intellectual Property Law*, Ch.2, p. 37-70 ISBN: 0-674-01204-6 [book chapter, not on web]

Class 6: Trademark

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- Origin of source, confusion, registration, passing off, branding, use, cybersquatting

Legislation

- Trade-marks Act (R.S.C., 1985, c. T-13): <http://laws-lois.justice.gc.ca/eng/acts/T-13/index.html>

Readings

- Gervais, D., and Judge, E. (2005) "Trademarks" in *Intellectual Property: The Law in Canada*, Chapter 4, p.165-167, 189, 192-198 (10 pages) [book chapter, not on web]
- Sterling, Bruce (2005), "The Sham Economy" in *Wired* 13.03. ISSN 1059-1028 (<http://www.wired.com/wired/archive/13.03/view.html?pg=4>)
- Fisman, R. (2011), "The Highest Form of Flattery" (*Slate.com* retrieved May 30 2011) <http://www.slate.com/id/2294927>
- Elliott, Charlene (2001), "Consuming Caffeine: The Discourse of Starbucks and Coffee" in *Consumption, Markets and Culture* 4(4): 369-382. ISSN: 1025-3866 http://www.crito.uci.edu/noah/CMC%20Website/CMC%20PDFs/CMC4_4.pdf

Class 7: Right of Publicity/Personality

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- Personal image, civil v. common law doctrines, celebrity culture, estates, CR/TM

Readings

- *Vanna White v. Samsung Electronics America Inc.* 971 F.2d 1395 (9th Cir. 1992). <http://www.law.uconn.edu/homes/swilf/ip/cases/white.htm>
- Leaffer, M, *The Right of Publicity: A Comparative Perspective* (2007). Faculty Publications. Paper 469. <http://www.repository.law.indiana.edu/facpub/469>
- Gamson, Joshua (2001), "The Assembly Line of Greatness: Celebrity in Twentieth-Century America" in *Popular Culture: Production and Consumption* (C. Lee Harrington and Denise D. Bielby, eds), Oxford: Blackwell, pp. 259-282. ISBN 063121710X http://pdfserve.informaworld.com/302296_731199588_911349656.pdf

Class 8: Patent I

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- Inventions, new/non-obvious/useful, claims, composition of matter/higher life forms

Legislation

- Patent Act (R.S.C., 1985, c. P-4): <http://laws-lois.justice.gc.ca/eng/acts/P-4/index.html>

Readings

- Gervais, D., and Judge, E. (2005) "Patents" in *Intellectual Property: The Law in Canada*, Chapter 4, p.339-348. [book chapter, not on web]
- Stiglitz, Joseph E., (2008) *Economic Foundations of Intellectual Property Rights*
- "Attack of the clones: American web firms are battling foreign hordes that look remarkably similar," *The Economist* (August 2011) <http://www.economist.com/node/21525394>
- Bullard, Linda (2005), "Freeing the Free Tree" <http://www.gene.ch/genet/2005/Aug/msg00094.html>
- Shorett, Peter, Paul Rabinow, and Paul R. Billings (2003), "The changing norms of the life sciences" in *Nature* (February) 21: 123-125. ISSN: 0028-0836 <http://www.nature.com/nbt/journal/v21/n2/full/nbt0203-123.html>

Class 9: Patent II

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- Inventions, new/non-obvious/useful, claims, composition of matter/higher life forms

Readings

- Hanson, Mark J. (2002), *Patenting Genes and Life: Improper Commodification?* in *Who Owns Life?* (David Magnus, Arthur Caplan, and Glenn McGee, eds.) New York, Ch.8 p. 161-174 ISBN: 1573929867 [book chapter, not on web]
- BRIEF AMICUS CURIAE OF RED HAT, INC.: *Bilski & Warsaw v. US Patent & Trademark Office* (2008), US Court of Appeals for the Federal Circuit
- de Beer, J. *Reconciling Property Rights in Plants* (2005) 8:1 *J. World Intellectual Property* 5. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=603961

Class 10: Industrial Designs

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- These are fairly self contained areas of IP that build on copyright and trademarks.

Legislation

- Industrial Design Act (R.S.C., 1985, c. I-9): <http://laws-lois.justice.gc.ca/eng/acts/I-9/index.html>

Readings

- Gervais, D., and Judge, E. (2005) "Industrial Designs" in *Intellectual Property: The Law in Canada*, Chapter 3, p. 141-145, 149, 155, 157-159 (9 pages). [book chapter, not on web]
- Carr, A., (2011), "How Much Can Asus, HP, And Others Rip Off Apple's Designs?" <http://www.fastcompany.com/1801211/how-much-can-hp-lenovo-asus-rip-off-apple-design>

Class 11: Trade Secrets + Integrated Circuit Topographies + Plant Breeders Rights

- Concepts, legal framework, definitions, case law evolution, infringement, remedies
- These are fairly self contained, specialized areas of IP that build on copyright, trademarks, and patents.

Legislation

- Integrated Circuit Topography Act (S.C. 1990, c.37): <http://laws.justice.gc.ca/eng/acts/I-14.6/index.html>
- Plant Breeders' Rights Act (S.C. 1990, c. 20): <http://laws.justice.gc.ca/eng/acts/P-14.6/index.html>

Readings

- Gervais, D., and Judge, E. (2005) "*Intellectual Property: The Law in Canada*," Chapter 8 - Integrated Circuit Topographies: p. 527-528 (2 pages); Chapter 7 – Plant Varieties: p. 519-520, 523-525 (5 pages) [book chapter, not on web]
- Hull, J., "*Trade secret licensing: the art of the possible*," *Journal of Intellectual Property Law & Practice* (2009) 4 (3): 203-212. <http://jiplp.oxfordjournals.org/content/4/3/203.full.pdf+html>
- Koch, John (2002), "Protecting Trade secrets: Dealing with departing and departed employees" in *The Continuing Legal Education Society of British Columbia*. http://www.cle.bc.ca/cle/utility+postings/PRFanalysis?to_print={790EE310-1C34-4F9D-8F1A-38320AEE1927}
- Radomsky, L., "*Sixteen Years After the Passage of the U.S. Semiconductor Chip Protection Act: Is International Protection Working?*" (*Berkeley Technology Law Journal*, Vol. 15, Issue 3, 2000) <http://www.law.berkeley.edu/journals/btlj/articles/vol15/radomsky.pdf>

Class 12: IP, Globalization & Social Justice Issues

- TRIPS, access to knowledge, biopiracy, traditional knowledge, access to medicines, open source etc.

Readings

- Duffield, G., (2005) "What is Biopiracy?" Queen Mary Intellectual Property Research Institute, Queen Mary University of London, p.1-4. <http://www.canmexworkshop.com/documents/papers/l.3.pdf>
- Kapczynski, A., "The Access to Knowledge Mobilization and the New Politics of Intellectual Property," 117 *Yale L.J. Pocket Part* 262 (2008). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1323525
- 't Hoen, Ellen, "Public Health and International Law: TRIPs, Pharmaceutical Patents and Access to Essential Medicines: A Long Way from Seattle to Doha." *Chicago Journal of International Law* 3: 27 (2002), pg 30-42. <http://fieldresearch.msf.org/msf/bitstream/10144/28436/1/Access%20TRIPS%20%27t%20Hoen.pdf>
- Dibbell, Julian (2004), "We Pledge Allegiance to the Penguin" in *Wired* 12(11) <http://www.wired.com/wired/archive/12.11/linux.html> ISSN: 1059-1028
- Azzi, R. M., *CPR: How Jacobsen v. Katzer Resuscitated the Open Source Movement*, 2010 U. Ill. L. Rev. 1271

Class 13: Review

- Course review, catch-up (if necessary), exam overview.

Additional information, updates & materials, supplemental/substitute readings & links etc. will be posted on the course webpage. **NOTE:** if you cannot access links in this PDF document while viewing it in WebCT or CULearn – download the file and open it directly in Acrobat or another PDF reader, and you should be able to link out.