

Course Outline

COURSE: LAWS 3202 A – Intellectual Property

TERM: Summer 2008

PREREQUISITES: One of LAWS 2003 or LAWS 2005

CLASS: Day & Time: Tuesdays & Thursday – 9:05-11:55 am
Room: 501 SA (Southam Hall)

INSTRUCTOR: Professor Sheryl Hamilton

CONTACT: Office: C 571 LA (Loeb)
Office Hrs: Tuesday – 1:30-3:30 pm (or by appointment)
Telephone: 613-520-2600 x. 1178
Email: Sheryl.Hamilton@carleton.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. Please note the deadline for submitting completed forms to the Paul Menton Centre is June 13, 2008 for first term summer courses and July 25, 2008 for second term summer courses. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html

COURSE OBJECTIVES & CONTENT:

From movie file-sharing, to patenting human genes, to trademarking the colours of the spectrum, to the design of your espresso machine, intellectual property issues are all around us. Once a relatively esoteric domain of property law, intellectual property now concerns us all as never before. Lines between public and private spaces are blurring; who is a creator and who is a consumer is much more complicated; new technologies enable new cultural practices, from collaboration to theft, depending upon one's perspective. In this class we will study the history, basic premises and socio-cultural implications of different types of intellectual property. Our particular focus will be on Canadian law, with some comparison to American and international intellectual property regimes. More importantly, however, we will interrogate how legal institutions, cultural institutions, citizens, social groups, and social practices interact in interesting and socially significant ways.

REQUIRED READING:

A majority of readings can be obtained online through the Carleton Library (as indicated). Some of these will require that you log on through Carleton's library system in order to have access to the journal; others you can access directly through the link.

The remainder of readings (those not online) will be available for reading and/or photocopying at the Readers' Digest Resource Centre, in the St. Patrick's Building on the tunnel level. The Centre's hours are as follows: Tuesday to Friday 8:30 am to 12:00 pm and 1:15 pm to 4:30 pm. The Centre will be closed for the afternoon on the 30th of July, and from July 31st to August 8th inclusive. I recommend photocopying all readings from the Resource Centre together early in the term.

EVALUATION PROCEDURES:

Evaluation in this course will consist of five components: Attendance (10%),
Two Discussion Piece Analyses (15% each = 30%),
Research Paper (30%),
Final Examination (30%).

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. Failure to complete the research essay or the final examination will result in a final grade of F.

A supplemental examination or essay assignment, following the same format, may be written upon application to/approval from the Registrar's Office. Exams are not returned but may be reviewed with the instructor during office hours the following term.

Late research papers will be marked down one-half letter grade (eg. B to B-) for each day submitted after the due date without an authorized extension from me. All extensions for medical reasons require written proof from a healthcare professional. Essays 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.

Essays must be submitted in class to the professor 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. Essays will be returned at the final exam. Otherwise they may be picked up from the professor 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 page 52 of current Undergraduate Calendar).

Attendance

Students are expected to attend all classes, read the required readings and discussion pieces, and be prepared to identify and discuss issues emerging from these in a thoughtful and informed manner.

Discussion Piece Analyses

Students will note that certain readings have been designated as Discussion Pieces. These articles (or videos) will be used to generate discussion of social issues in that class. Over the course of the term, each student is to submit two (2) critical analyses (3-5 double-spaced pages) of two different discussion pieces (not to be selected from the same thematic – for e.g. not the two classes on copyright). Each discussion piece should be analyzed in relation to the other readings for that class, the lecture, class discussion and any other relevant course readings. No further research is required. Each Discussion Piece Analysis will be due the class following the one for which we have read that piece. If you do not submit by the deadline for that Discussion Piece, you must choose another one. These will not be accepted late.

Research Paper

Students will complete a final paper analyzing the social implications of the intellectual property issues discussed in an item of media: a newspaper article, a documentary film, a Youtube video, etc. The analysis should be informed by academic research into the issue(s) identified. Not less than five academic, refereed sources should be incorporated. Feel free to use more. The media piece should be included or clear reference to it provided, as appropriate. The paper should offer a critical analysis of the social, legal, economic, cultural, and/or political questions around an aspect of intellectual property law, rather than offer a presentation of the law itself or a rearticulation of the media item. Papers should be between 10-12, double-spaced, typed pages in length. Students are encouraged to meet with me once informally over the course of the term to discuss their paper ideas.

The Research Paper is due on the last day of class, **August 12th**.

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 material – lectures, readings and discussions. It will be comprised of definitions, short answers and essay questions. The exam will be discussed in more detail on the last class during the examination review.

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.

SCHEDULE OF READINGS AND LECTURES:**July 3 Introduction****July 8 What is Intellectual Property?**

Hettinger, Edwin C. (2001), "Justifying Intellectual Property" in *Philosophy and Public Affairs* (John Haldane, ed.), New York: Cambridge University Press, pp. 31-52. ISSN: 0048-3915
<http://links.jstor.org/sici?sici=0048-3915%28198924%2918%3A1%3C31%3AJIP%3E2.0.CO%3B2-O>

Discussion Piece: World Intellectual Property Organization (2005), "Intellectual Property in the Fashion Industry" in *WIPO Magazine* (May-June): 16-19. ISSN: 1020-7074
http://www.wipo.int/freepublications/en/general/121/2005/wipo_pub_121_2005_05-06.pdf

July 10 Enclosing the Public Domain: Copyright I

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>

Discussion Piece: Geist, Michael (2007) "Putting Canadian Privacy in Perspective"
<http://www.youtube.com/watch?v=6TloG6qL3gg>

July 15 Publics and Politics: Copyright II

Scassa, Teresa (2005), "Interests in the Balance" in *In the Public Interest: The Future of Canadian Copyright Law* (Michael Geist, ed.), Irwin Law: 41-65.
http://www.irwinlaw.com/PublicInterest/one_2_scassa.htm

Discussion Piece: Geist, Michael (2008), "The Canadian DMCA: A Betrayal"
<http://www.michaelgeist.ca/content/view/3029/125/>

July 17 Inventors, Investors, and Indigenous Knowledge: Patents I

Magnus, David (2002), "Intellectual Property and Agricultural Biotechnology: Bioprospecting or Biopiracy?" in *Who Owns Life?* (David Magnus, Arthur Caplan, and Glenn McGee, eds.), Amherst, NY: Prometheus Books, pp. 265-276 (*In Resource Centre*).

Discussion Piece: Bullard, Linda (2005), "Freeing the Free Tree" (Briefing Paper) (*In Resource Centre*).

July 22 Inventing Nature with Biopatents: Patents II

McGee, eds.), Amherst, NY: Prometheus Books, pp. 161- 174 (*In Resource Centre*). Hanson, Mark J. (2002), "Patenting Genes and Life: Improper Commodification?" in *Who Owns Life?* (David Magnus, Arthur Caplan, and Glenn

Discussion Piece: 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>

July 24 Marks of Distinction: Trademark I

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

Discussion Piece: "Counterfeit Culture: Ripped Off Consumer Goods: The Top Ten List"
<http://www.cbc.ca/news/interactives/map-counterfeit-goods/>

July 29 The Politics of Marking: Trademark II

Nel, Philip (2003), "The Disneyfication of Dr. Seuss: Faithful to Profit, One Hundred Percent?" in *Cultural Studies* 17(5): 579-614. ISSN: 09050-2386
<http://journalsonline.tandf.co.uk.proxy.library.carleton.ca/openurl.asp?genre=article&issn=0950-2386&volume=17&issue=5&spage=579>

Discussion Piece: Edgerton, Gary and Kathy Merlock Jackson (1996), "Redesigning Pocahontas: Disney, the 'white man's Indian,' and the marketing of dreams" in *Journal of Popular Film and Television* 24: 90-98. ISSN: 0195-6051
<http://web.ebscohost.com.proxy.library.carleton.ca/ehost/viewarticle?data=dGJyMPp44rp2%2fdV0%2bnjisfk5le46bZQtg2xT7ek63nn5Kx95uXxjL6nrUmXPbBlrq2eTrips1Kxrp5oy5zyit%2fk8Xnh6ueH7N%2fiVaunsEy3rrVltqi0PurX7H%2b72%2bw%2b4ti7jeTeplzf3btZzJzfhruvtUiyprVOsa2yPuTI8IXf6ruA8uPqXvPi6mzj7vIA&hid=117>

July 31 Author(iz)ing 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*, 8: 599-654 <http://law.fordham.edu/publications/articles/200flspub6683.pdf>

Discussion Piece: *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>

August 5 Repetition and Representation: Industrial Design

Nickles, Shelley (2002), "Preserving Women: Refrigerator Design as Social Process in the 1930s" in *Technology and Culture* 43(October): 693-727. ISSN:0040-165X
http://muse.jhu.edu.proxy.library.carleton.ca/journals/technology_and_culture/v043/43.4nickles.html

Discussion Piece: WIPO (2005), "Winning Designs" in *WIPO Magazine* (May-June), 14-16. ISSN 1020-7074
http://www.wipo.int/freepublications/en/general/121/2005/wipo_pub_121_2005_05-06.pdf

August 7 Shhh, don't tell: Trade Secrets

Vaver, David (1990). "What is a Trade Secret?" in Trade Secrets (Roger T. Hughes, ed), p. 17. The Law Society of Upper Canada, pp. 1-41 (*In Resource Centre*).

Discussion Piece: 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/Analysis/Collection/02-protectingtradesecrets>

August 12 Wrap-up and Examination Review**Pertinent Legislation to Peruse:**

Bill C-61, An Act to Amend the Copyright Act
<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3570473&Language=e&Mode=1>

The Copyright Act, S.C. 1985, c. C-42 <http://www.laws.justice.gc.ca/en/C-42/index.html>

The Trademark Act, S.C. 1985, c. T-13 <http://www.justice.gc.ca/en/T-13/index.html>

The Patent Act, R.S. c. P-4 <http://www.laws.justice.gc.ca/en/P-4/index.html>

Industrial Design Act, R.S. 1985, c. I-9 <http://www.laws.justice.gc.ca/en/I-9/index.html>

Integrated Circuit Topographies Act, 1990, c.37 <http://laws.justice.gc.ca/en/I-14.6/index.html>