

## Course Outline

<b>COURSE:</b>	<b>LAWS 3202A – Intellectual Property (0.5 Credit)</b>
<b>PREREQUISITES:</b>	<b>1.0 credit from either Private Law (LAWS 2201/2) or Public Law (LAWS 2501/2)</b>
<b>TERM:</b>	<b>Summer 2010 (July - August)</b>
<b>CLASS: Day &amp; Time:</b>	<b>Tuesday &amp; Thursday from 9:05 am - 11:55 am</b>
<b>Room:</b>	<b>Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>R. Prasad</b>
<b>CONTACT:</b>	<b>Office: D482 Loeb</b>
	<b>Office Hours: TBD, by appointment</b>
	<b>Email: laws3202@yahoo.ca</b>

Students with disabilities needing academic accommodations in this course are required to contact a coordinator at the Paul Menton Centre to complete the necessary *letters of accommodation*. The student must then make an appointment to discuss their needs with the instructor at least two weeks prior to the first class or ITV test. This is to ensure sufficient time is available to make the necessary accommodation arrangement. Please note the deadline for submitting completed forms to the PMC for formally scheduled exam accommodations is July 30 2010 (for Summer Term examinations). With regard to accommodations for religious obligations and pregnancy, please see <http://www.carleton.ca/law/accommodations.htm>.

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**COURSE OBJECTIVES & CONTENT:**

Once a relatively esoteric domain of property law, intellectual property ("IP") is now one of the most relevant and radically changing frontiers of social policy and law all around the globe. As IP evolves with rapid changes in demography, technology and capitalist interests, it is creating new legal challenges with important social implications. IP rights are becoming more prominent and pressing concerns, encompassing various topics from the simple, such as file-sharing; to the seemingly absurd, such as a trademark on a colour or the right to personal identity; to the profound, such as the right to own and control newly modified lifeforms from bacteria to babies.

This course is meant to provide a basic introduction and overview to the history, premises, statutory framework and socio-legal context surrounding different types of intellectual property in Canada. The course focuses primarily on Canadian law and policy with respect to copyright, trademark, and patent regimes, but also examines trade secrets, right of personality, industrial design protection, and integrated circuit topographies. It also reviews some relevant US and international IP regimes. Classes begin with a review of traditional conceptions of property rights, ideas vs. expression, and the reciprocal tension between private and public interests inherent in IP, then go on to a more detailed review of each type of intellectual property protection. The course will continue using a variety of case law, social and legal policy articles, news stories, and critiques to explore and deconstruct the way IP regulations mesh with various social concerns such as biodiversity, access to medicines, ethics, traditional knowledge, corporate power & strategy, technological primacy, and globalization.

Changes in IP law and regulation reflect changes in modern social relations: lines between public and private spaces are blurring; the distinction between creator and consumer is changing. Digital technology is enabling new forms of cultural expression that test traditional notions of ownership and originality and blur the line between creator and consumer. Developments in biotechnology are challenging our idea of what is natural, discovery vs. innovation, and who can own and control lifesaving inventions.

The way IP policies and laws are framed by different commercial, public and private interests affects the way we collectively access and use ideas, develop new and useful products, and maintain brand loyalty to the products and services we rely on to make our lives meaningful and interesting. Indeed, the summer of 2010 has begun with a new copyright bill that could reflect a major shift in Canadian intellectual property law and policy. If you surf the internet, download or listen to music, or do research for school this week, the extent to which any of these activities may or may not be legal is changing. Are these laws needed to protect creativity and incentivize innovation, or are they just glorified corporate welfare that protect monopolies and criminalizes normal activities? This course will try to introduce you to the basic concepts and legal context so you can better decide for yourself.

### **REQUIRED READINGS:**

There will be scheduled readings for each class. Please read them prior to the lecture. A list of readings will be posted on the course webpage (WebCT). Many readings are available online via the internet or electronic journal archives via campus proxy server. Other reading extracts will be put on reserve in the library.

A course-pack of readings for the course may be available if there is sufficient enrolment and demand this term. It will be from Haven Books, 43 Seneca Street (corner of Sunnyside & Seneca, 5 minutes walk from campus), 613-730-9888. Additional course materials, information and links to readings will be posted on WebCT.

### **EVALUATION PROCEDURES:**

Participation (Attendance + Discussion) = (10%),  
Two Discussion Piece Analyses (2 x 10% each = 20%),  
Case Commentary (20%)  
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).

### **Attendance & Participation:**

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 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 - 4 double-spaced pages only) of two different discussion pieces (not to be selected from the same theme (i.e. don't do two papers on copyright)). Each discussion piece should be analyzed in relation to the other readings for that week, the lecture, class discussion and any other relevant course readings. No further research is required. One discussion piece will be due in each half of the term, usually the week after the class in which we have read that piece. If you do not submit by the deadline for that Discussion Piece, you must choose another week. These will not be accepted late. As with any upper-year law course, grammar, spelling, originality and quality of the analysis papers will count.

### **Case Commentary:**

Students will complete a case commentary on a Canadian intellectual property case decision or brief. A list of topic cases will be provided after the second week. The case commentary will give students an opportunity to read in full one of the many cases discussed in class and offer a short critical analysis of the social, legal, cultural, and/or

political questions around an aspect of intellectual property law, rather than a simple presentation of the law itself. Analyses & Commentaries should be between 3-5 pages in length, 12pt font, double-spaced. As with any upper-year course, grammar, spelling, originality and quality of research essay papers will count. Outsourced and/or professionally edited papers will be given a failing grade and a report of academic misconduct. Students are encouraged to meet with me once informally during the term to discuss their paper ideas.

The due date will be discussed in class – usually a week or two 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 on the last 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.

### **SCHEDULE OF READINGS AND LECTURES:**

(Based on a 13 classes session. Proposed readings and topics are subject to reasonable changes/substitutions.)

#### **Class 1: Meet-n-Greet**

- Overview of aims, outline, evaluation, logistics, materials, questions.

#### **Class 2: Introduction to Intellectual Property Concepts**

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

##### Readings

- 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
- 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 <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 & the disappearance of the public domain” in *Daedalus* 131(2): 13-25. ISSN: 0011-5266 <http://james-boyle.com/daedalus.pdf>

#### **Class 3-5: Copyright**

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

##### Readings

- Gervais, D., and Judge, E. (2005) “Copyright” in *Intellectual Property: The Law in Canada*, Chapter 2, p.7-25
- Discussion Piece: Gladwell, Malcom “SOMETHING BORROWED: Should a charge of plagiarism ruin your life?” in *The New Yorker* (November 2004) [http://www.newyorker.com/fact/content/articles/041122fa\\_fact?041122fa\\_fact](http://www.newyorker.com/fact/content/articles/041122fa_fact?041122fa_fact)
- 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
- 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
- Brief of Amicus Curiae (Various): *JD Salinger (Estate) v. F. Colting & Windupbird Publishing* (2009), 09-2878-cv, On Appeal from the US District Court for the Southern District of New York
- Amy Kapczynski, “The Access to Knowledge Mobilization and the New Politics of Intellectual Property,” 117 *Yale L.J. Pocket Part* 262 (2008).

### **Class 6-7: Trademark**

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

#### Readings

- Gervais, D., and Judge, E. (2005) "Trademarks" in *Intellectual Property: The Law in Canada*, Chapter 4, p.165-167, 189, 192-198
- 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](http://www.crito.uci.edu/noah/CMC%20Website/CMC%20PDFs/CMC4_4.pdf)
- 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> )

### **Class 8: Right of 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>
- 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

### **Class 9: Industrial Designs + Trade Secrets + Integrated Circuit Topographies**

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

#### Readings

- 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. ISBN 0-88759-973-7
- 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}](http://www.cle.bc.ca/cle/utility+postings/PRFanalysis?to_print={790EE310-1C34-4F9D-8F1A-38320AEE1927})

### **Class 10-11: Patent**

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

#### Readings

- Gervais, D., and Judge, E. (2005) "Patents" in *Intellectual Property: The Law in Canada*, Chapter 4, p.339-348.
- BRIEF AMICUS CURIAE OF RED HAT, INC: *Bilski & Warsaw v. US Patent & Trademark Office* (2008), US Court of Appeals for the Federal Circuit
- Greene, S. (2004), "Indigenous People Incorporated? Culture as Politics, Culture as Property in Pharmaceutical Bioprospecting" in *Current Anthropology* 45(2): 211-37. ISSN: 0011-3204  
<http://www.journals.uchicago.edu.proxy.library.carleton.ca/CA/journal/issues/v45n2/042001/042001.web.pdf>
- Jeremy de Beer, "Reconciling Property Rights in Plants," (2005) 8:1 *J. World Intellectual Property* 5.
- Bullard, Linda (2005), "Freeing the Free Tree" at  
<http://www.gene.ch/genet/2005/Aug/msg00094.html>
- 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
- 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 12: IP, Globalization & Social Justice Issues**

- Access to knowledge, biopiracy, traditional knowledge, access to medicines, TRIPS...

#### Readings

- Dutfield, G., (2005) "What is Biopiracy?" Queen Mary Intellectual Property Research Institute, Queen Mary University of London, p.1-4.
- Wirtén, Eva Hemmungs (2004), "From the 'Intellectual' to the 'Cultural': Can There Be Property With a 'Difference'?" in No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization, Toronto: University of Toronto Press, 100-124. ISBN: 080208608X
- Ellen 't Hoen, "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.
- 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
- BRIEF OF AMICUS CURIAE SOFTWARE FREEDOM LAW CENTER: Jacobsen v. Katzer (2009), 06 CV 1905, Appeal from the United States District Court for the Northern District of California.

### **Class 13: Review Class**

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

More Information about supplemental/substitute readings and a linked reading list will be posted on the class WebCT page.