

Course Outline

COURSE: LAWS 3202A – Intellectual Property (0.5 Credit)
PREREQUISITES: 1.0 credit from LAWS 2201, LAWS 2202, LAWS 2501, LAWS 2502
TERM: Winter 2012
CLASS: Day & Time: Monday @ 08:35 am - 11:25 am
Room: ME 3235 (Mackenzie Building)
INSTRUCTOR: R. Prasad
CONTACT: **Office:** B442 Loeb
Office Hours: TBD, & by appointment
Telephone: none – please use email
Email: laws3202@yahoo.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. For further information, please see: <http://www2.carleton.ca/pmc/students/accommodations>. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by 07 March 2012 for April exams. For Religious and Pregnancy accommodations, please contact Equity Services, x5622 or their website: www.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. As societies leverage technology more and more, and economies shift from nationalized manufacturing to globalized knowledge-based products, the effects of IP law and policy are becoming more frequent and common concerns: not just for lawyers, corporations national governments, but especially for ordinary consumers of products and media. Each day there is a new major patent, copyright, or trademark lawsuit that may have serious effects on rights and activities you take for granted, such as your ability to obtain and consume basic commercial and cultural products such as computers, tablets and smartphones, software, music, movies, media, and designs, never mind essentials such as food, drugs and medical technology. 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 presents a basic introduction and overview to the history, premises, statutory framework and social context surrounding different types of intellectual property law in Canada. Classes explore Canadian law and policies that govern our copyright, trademark, patent, trade secret, right of personality, industrial design protection, and integrated circuit topography regimes. We will also look at some relevant US and international law. The course begins with a review of traditional understandings of property then introduces fundamental concepts such as ‘idea vs. expression’ and the reciprocal tension between private vs. public/creator vs. consumer interests at the center of many lawsuits and changing public perceptions. The course covers various core areas of intellectual property law through review and critical analysis of case law, social and legal policy articles, news stories, and critiques of IP law, policy and trends. We will also examine how IP regulates various social concerns such as biodiversity, access to medicines, ethics, traditional knowledge, corporate power & strategy, technological primacy, and globalization.

2012 will be a big year in IP law. Canada is about to pass a new and stricter copyright law, and the USA is about to pass new online piracy legislation that may set new global restrictions on access to content on the internet. If you surf the internet, download or listen to music, do research for school, or depend on technology of any kind, the legality of any of these activities may change significantly. Are IP laws essential to protect creativity and incentivize innovation, or are they just glorified corporate welfare that protect monopolies and inhibit cultural progress? This course introduces the core concepts, cases, controversies and contexts so you can better decide for yourself.

REQUIRED READINGS:

There will be scheduled readings for each class. Please read them prior to the lecture. 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 reading extracts will be put 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, 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 (or whatever temporary location is in place during renovations) 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 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 (3 - 4 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 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 topic reading analysis 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 topic you must choose another week. 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 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. Collaborative, outsourced and/or professionally edited papers will be given a failing grade and a report of academic misconduct. Due date will be discussed in class – 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:

(Based on a 12 class session. This outline & readings/topic distribution is subject to reasonable changes.)

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, justifications paradigms 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 [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 <http://links.jstor.org/sici?sici=0048-3915%28198924%2918%3A1%3C31%3AJIP%3E2.0.CO%3B2-O>

Class 3: IP Concepts (con’t) + Copyright

- 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>

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

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

- 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 <http://cyberlaw.stanford.edu/system/files/Salinger%20Amicus%20Brief%20%28filed%29.pdf>
- 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 <http://www.free-culture.cc/freecontent>
- [web only] Geist, M (Oct. 01 2011) “Why Canada’s New Copyright Bill Remains Flawed” <http://www.michaelgeist.ca/content/view/6038/159/>; (Sep. 29 2011) “Copyright Is Back: Why Canada is Keeping the Flawed Digital Lock Rules” <http://www.michaelgeist.ca/content/view/6033/125/>
- [web only] Sookman, B (Oct. 03 2011) “Some observations on Bill C-11: The Copyright Modernization Act” <http://www.barrysookman.com/2011/10/03/some-observations-on-bill-c-11-the-copyright-modernization-act/>

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>
- 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

- 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]
- "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 <http://www.groklaw.net/images/BilskiRedHatSCbrief.pdf>
- Jeremy de Beer, "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) [book chapter, not on web]
- 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 [book chapter, not on web]
- 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}
- [Sixteen Years After the Passage of the U.S. Semiconductor Chip Protection Act: Is International Protection Working?](http://www.law.berkeley.edu/journals/btlj/articles/vol15/radomsky.pdf) (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/I.3.pdf>
- Amy Kapczynski, "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
- 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.
<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
- 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.
<http://www.softwarefreedom.org/resources/2009/jacobsen-amicus-brief.html>

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

More information about additional materials, supplemental/substitute readings & links etc. will be posted on the course webpage.

NOTE: 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 or via the university proxy. If you cannot obtain an article, check your proxy settings, and/or try to web search the title in case it has moved.