

CARLETON UNIVERSITY
Department of Law and Legal Studies

Course Outline

COURSE: **LAWS 3202 A – Intellectual Property**

TERM: **Summer 2015**

PREREQUISITES: **1.0 credit from LAWS 2201, LAWS 2202, LAWS 2501, LAWS 2502**

CLASS: **Mondays and Wednesdays 11:35 – 2:25 pm**
UC 180

INSTRUCTOR: **Professor Sheryl Hamilton**

OFFICE HOURS: **Wednesdays 3-4:30 in River Building Office (or by appointment)**

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COURSE DESCRIPTION

Intellectual property issues pepper our daily media, the blogosphere, the attention of the Supreme Court of Canada, and the parliamentary agenda. These disputes shape our mediascape, our healthcare system, our built environment, our ideas of who can be a criminal, and the global economy. It is not hyperbole to suggest that this is the single-most exciting time in history to be studying intellectual property.

From movie file-sharing, to patenting human genes, to trademarking the scents around us, to the design of your coffee machine, intellectual property issues are all around us. Intellectual property laws and policies are framed by different commercial, public and private actors in ways that directly affect our access to creative works, new and useful products, and quality brands of goods and services that we rely upon to make our lives possible and meaningful. At the same time, we – as consumers, users, and citizens – are more active in understanding intellectual property as contested political terrain than ever before.

As Edwin Hettinger notes, “[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.

LEARNING OBJECTIVES

In this course, we will learn about:

- the dominant political and philosophical rationales for protecting intellectual property and the main critiques of those justifications;
- the legal fundamentals of the major areas of intellectual property in Canada; and
- some of the central 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

Readings will be available through CULearn.

EVALUATION

*** An important note on summer classes:*

Summer classes are very intense as there are two classes per week exploring a quantity of material that typically would be taken up over the course of two weeks in the Fall or Winter terms. If you fall behind in your readings or assignments, it is very challenging to catch up. I recommend really staying on top of your schedule in order to maximize your performance in the course.

Students will be evaluated in the following areas:

1. Participation (15%)
2. Three Discussion Piece Analyses (1 @ 10% and 2 @ 15% each = 40%)
3. Film Analysis (In Class) (20%)
4. Final Examination (25%)

The requirements for each assignment will be discussed on the first day of class, are detailed in the course outline, and supplementary information will 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.

Please note that all assignments must be word-processed and submitted in hard copy, unless completed in class. Handwritten papers, computer files, or e-mail attachments will not be accepted. Please retain a photocopy or secure digital 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 and to demonstrate authorship. I recommend that you keep earlier drafts of your work and/or your research materials.

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 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, tablets or laptops for non-course related 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. You are encouraged to ask questions, share experiences, and relate course material to issues you see around you in your everyday life. Demonstrated knowledge of the content of assigned readings is essential to a good participation grade.

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 three (3) critical analyses (4-5 double-spaced, typed pages) of three different DPs. The DP should be critically analyzed in relation to the other readings for that week (and any other relevant course material from previous weeks). No further research is required; however, you are required to address all of the readings from that particular class. No bibliography is required but as you will be making specific reference to readings, you should cite the author and page numbers, as appropriate. Please use whatever style guide you prefer.

When thinking critically about the DP, you should be guided by the following questions. Please note that these questions are only prompts to your critical evaluation of the material. Not all questions will work equally well for all types of DP's and your analyses should not merely be answers to these questions.

- who/what is the author of the DP and where was it published? How do those factors effect the content, style, and argument of the DP?
- in what medium is the DP and how does that shape its content, perspective, and so on?
- is the genre of the DP relevant and if so, how?
- how are you as the reader being addressed?
- what assumptions is the author making about the nature of property? Of consumers/users? Of the law? Of creators? Of the economy? Of society? Of the public interest? Etc.

- what are the assumptions made in the piece about who holds power and who does not?
- what is the nature of the problem that the author is trying to address with their piece? How are they framing the problem? How are they understanding the solution? What is the relationship between their understanding of the problem and their proposed solution?
- How do these assumptions and framing cohere with or differ from those in the other readings?
- Is there anything important that the DP author does not address?
- Are there any concepts, arguments or ideas in the other readings that can assist in explaining/analyzing the argument or content of the DP?
- Do the various authors agree or disagree, why or why not?
- is the DP persuasive? Why or why not? Does the author mobilize convincing evidence for their claims? How can you enhance your analysis of this using the other readings?

Each Discussion Piece Analysis (DPA) will be due on the date specified in the course outline.

DPA #1 – May 11

DPA #2 – May 20

DPA #3 – May 27

These assignments will not be accepted late. If you miss the deadline, you should complete the Alternative DPA, due June 8. You may also complete the Alternative DPA if you wish to replace one of the grades received for a previous DPA.

Film Analysis

On June 8, we will screen the documentary, *Objectified* (2009) in class. We will have a brief collective discussion of the film and then you will receive an analysis worksheet to be completed in class. These will be turned in at the end of the class. You will be expected to be able to use the content, concepts and ideas from that week's readings in your analysis. You will not have in-class time to complete the readings.

Final Examination

There will be a final examination in the scheduled examination period which will examine students on their integrated and critical knowledge of all course materials – lectures, readings and discussions. It will be comprised of definition, short answer and essay questions. It will be a three hour, closed book exam. 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

DPA's are not accepted late as there is an alternative assignment available to you. The other assignment will be completed in class.

SPECIAL NEEDS

Students Requiring Formal Accommodation

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 satisfactorily.

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/>

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 4 **Introduction**

May 6 **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.

Boyle, James (2002), "Fencing off ideas: enclosure and the disappearance of the public domain" in *Daedalus* 131(2): 13-25.

Discussion Piece: Please watch the series of FBI Public Service Announcements (The Flea Market, The Rip Off, Toxic Meds, Vanishing Band, and Trade Secrets)

May 11 **'Whacking the Mole': Copyright I**

Bilton, Nick (2012), "Internet Pirates Will Always Win" in *The Sunday Review of The New York Times*, August 4, 2012.

Andersson, Jonas (2009), "For the Good of the Net: The Pirate Bay as a Strategic Sovereign" in *Culture Machine*, 10: 64-108.

Discussion Piece: Klose, Simon (dir.) (2013), *TPB AFK: The Pirate Bay Away from the Keyboard* – documentary about the Pirate Bay copyright infringement trial.

DPA #1 due (10%) – on DP and material from “What is Intellectual Property and Why Do We Protect It?” (May 6).

May 13 Resisting the Enclosure: Copyright II

Sell, Susan (2013), “Revenge of the ‘Nerds’: Collective Action Against Intellectual Property Maximalism in the Global Information Age” in *International Studies Review* 15(1): 67-85.

Robertson, Kirsty (2013), “No One Would Murder for a Pattern: Crafting IP in Online Knitting Communities” in *Putting Intellectual Property in its Place: Rights Discourses, Creative Labour and the Everyday* (Laura Murray, Tina Piper and Kirsty Robertson, eds.), Oxford: Oxford University Press.

Discussion Piece: Doctorow, Cory (2010), “What do we want copyright to do?” in *The Guardian*, November 23.

May 18 Victoria Day Holiday

May 20 Cultural Appropriation and/in Brand Culture: Trademark I

Shand, Peter (2002), “Scenes from the Colonial Catwalk: Cultural Appropriation, Intellectual Property Rights and Fashion” in *Cultural Analysis* 3: 47-88.

Discussion Piece: Wheeler, Kim (2015), “Indigenous Fashion Designers Prove Authenticity Can Be Elegant, Edgy,” March 16, 2015 (CBC News)

DPA #2 due (15%) – on DP and material from Copyright I or Copyright II (May 11 or 13).

May 25 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.

Elliott, Charlene (2006), "Colour™ and the Sensory Scan" in *MCJ: A Journal of Media and Culture* 8(4).

Discussion Piece: Bhasin, Kim (2012), "Can you identify these 12 brands by their trademarked colour?" in *Business Insider* (February 1, 2012).

May 27 Author(iz)ing the Celebrity: Appropriation of Personality

Hearn, Alison (2008), "Meat, Mask, Burden": Probing the Contours of the Branded 'Self" in *Journal of Consumer Culture* 8(2): 197-217.

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).

Or depending upon your musical taste ...

Sherwell, Philip (2014), "Michael Jackson's 'return to life' puts dollar signs in the eyes of concert promoters" in *The Telegraph*, May 24.

DPA #3 due (15%) – on DP and material from Trademark I or Trademark II (May 20 or 25).

June 1 Knowledge, Property and Rights Discourse: Patents I

Browiak, Craig (2004), "Farmer's Rights: Intellectual Property Regimes and the Struggle Over Seeds" in *Politics & Society* 32(3): 511-43.

Discussion Piece: Monsanto Canada Inc. v. Schmeiser, [2004] 1 S.C.R. 902 (S.C.C.).

June 3 Biopatents/Biopolitics: Patents II

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

Gerlach, Neil et al. (2011), "Biopatents and the Ownership of Life" in *Becoming Biosubjects: Bodies. Systems. Technologies*, Toronto: University of Toronto Press, pp. 98-135.

Discussion Piece: Mulholland, Angela (2013), "US Gene Patent Ruling Could Mean Better Cancer Genetic Tests for Canadians" at <http://www.ctvnews.ca/health/health-headlines/u-s-gene-patent-ruling->

[could-mean-better-cancer-genetic-tests-for-canadians-1.1325381](#) -- read story and watch video excerpt from Canada AM

June 8

Communicating the Built Environment: Industrial Design

Screening and Discussion – *Objectified* (2009), Dir. Gary Hustwit

Worksheet to be distributed, completed, and submitted in class. Use of the below readings will be required.

Nickles, Shelley (2002), "Preserving Women: Refrigerator Design as Social Process in the 1930s" in *Technology and Culture* 43 (October): 693-727.

Norman, Donald (2005), "Three Levels of Design: Visceral, Behavioral and Reflective" in *Emotional Design: Why We Love (or Hate) Everyday Things*, Basic Books.

Alternative DPA due on DP and material from Patents I or Patents II (June 1 or 3).

June 10

Class cancelled, Professor attending morning and afternoon convocations

June 15

Wrap-up and Examination Review