

Course Outline

COURSE: LAWS 3202A – Intellectual Property

TERM: WINTER 2019

PREREQUISITES: 1.0 Credit from LAWS 2201, 2202, 2501, 2502

CLASS: **Day & Time:** Mondays, 8:35 – 11:25 am
 Room: Please check Carleton Central for current room location

INSTRUCTOR: Dr. Sheryl N. Hamilton

CONTACT: **Office:** Loeb Building C463 and 2306 Richcraft Hall
 Office Hrs: Tuesdays 9:30 – 11:30 am, or by appointment (Loeb office)
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CALENDAR COURSE DESCRIPTION

Critical assessment of copyright, patents, trademarks, trade secrets and other forms of intellectual property; regulation and governance of information technology including self-regulation, standard setting, licensing, competition policy and international dimensions.

COURSE DESCRIPTION

From sporting franchises being challenged for their racialized/racist trademarked logos, to pharmaceutical company CEO's hiking the prices of popular patented drugs, to high profile music artists being sued (still) for copying the songs of other artists, to various communities either rejecting or eschewing intellectual property rights, intellectual property issues are in our newsfeeds virtually every day, in Canada and around the world. These disputes impact our mediascape, our healthcare system, our built environment, our ideas of who is a criminal and who is an activist, the global information economy, and more.

Intellectual property laws and policies are framed, enacted and violated 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 and participating in intellectual property as a contested political terrain than ever before.

As Edwin Hettinger notes, “[p]roperty institutions fundamentally shape a society” (2001: 31). 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 AND OUTCOMES

In this course, we will learn about:

- the dominant political and philosophical rationales for protecting intellectual property;

- a number of critiques of intellectual property regimes;
- the legal fundamentals of the major areas of intellectual property in Canada;
- some alternative social practices, other than law, to protect cultural production; and
- some of the social, political, economic and cultural issues that are at the heart of contemporary struggles over intellectual property in Canada and around the world.

You will gain critical reading skills, the capacity for engaged observations of your everyday environment, practice in analytic writing, and the ability to apply theoretical and analytic concepts to “real life” scenarios.

REQUIRED TEXTS

All readings will be available through CULearn.

EVALUATION

(All components must be completed in order to get a passing grade)

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Students will be evaluated in the following areas:

1. Participation (15%)
2. Three *IP in the News Analyses* (1st at 10% and 2nd two at 15% each for a total of 40%)
3. In-Class Film analysis (15%)
4. Final Examination (30%)

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. *IP News Analyses* will not be accepted by email. Please retain a 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. To this end and to minimize the impacts of technology failure, I recommend that you keep earlier drafts of your work and all relevant materials.

The readings are a key component in your participation grade, your three *IP in the News Analyses*, and the final exam, as well as in your sophisticated comprehension of the issues we are studying. I strongly recommend making the reading of them part of your regular routine of preparing for this class.

Participation

You are expected to attend all classes, respect the start and finish times of the class, read the required readings 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 your level of engagement in the classroom, the quality of your participation in classroom activities, and your 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 0/15 for participation.

Attendance will be marked in each 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.

Regular demonstrated knowledge of the content of assigned readings is essential to a participation grade in the A or B range.

IP in the News Analyses

This is an assignment focused on helping you hone your critical reading skills for popular writing using the ideas and concepts you are learning from your academic studies.

You will note that there are news items included in every week's readings. In the weeks of January 28, March 4 and March 18 you will be asked to submit a critical analysis of the news item for that week. Your analysis should be 4-5 pages in length, typed and double-spaced. Use 12pt and 1 inch (2.5 cm) margins on all sides. Please include a cover page with the title of your analysis, your name, your student number, the date, the course name and number, and my name. You do not need to include a bibliography as you will only be using course material, but you should cite relevant ideas and passages using an appropriate citation style.

The news item 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 must demonstrate comprehension of all of the readings for that particular week.

Your focus should be on the news item and demonstrating that you can read it critically. Use concepts, critiques and ideas from the other readings to enhance your analysis. Do not describe the readings and do not write a mini-essay on the topic of that week. Do not accept the news article at face value; even if you agree with the content, you should be focused on identifying the underlying assumptions the author is making in order to make their claims or to take the position which they are taking.

Below I have provided some questions to prompt you in how you can think critically. 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 news items and your analysis should not merely be answers to these questions.

- who is the author of the news item, what type of material is it (video, op-ed piece, advertisement, news article, etc.), where was it published or circulated? How do those factors affect its content, style, and arguments?
- how are you as the reader/viewer being addressed by the author?
- what assumptions is the author making about the nature of property or intellectual property? Of consumers/users? Of the law? Of creators? Of the economy? Of society? Of the public interest? And so on.
- 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?
- how does their definition of the problem shape their proposed solution?
- how do these assumptions and framing compare and contrast with those in the other readings for that week?
- what concepts, arguments or ideas in the other readings that can assist in explaining/analyzing the argument or content of the news item?
- do the various authors agree or disagree, why or why not?

The *IP in the News Analyses* are due as follows:

IP in the News Analysis #1 – January 28 – Questions of Originality and Authorship: Copyright I

IP in the News Analysis #2 – March 4 – Property in the Senses: Trademark II

IP in the News Analysis #3 – March 18 – Owning the Human? Patents II

Alternate *IP in the News Analysis* – April 1 – When Intellectual Property Doesn't Work ...

These assignments will not be accepted late. If you miss the deadline for *IP in the News Analysis* #1, #2, or #3 (or opt not to complete one or more of them), you are welcome to complete the Alternate DPA. You may also complete the Alternate DPA if you wish to replace one of the grades received for a previous assignment. I will include the grades for your best 3 *IP in the News Analyses* in your overall grade.

Film Analysis

On **February 11** we will view the documentary *TPB:AFK (The Pirate Bay: Away From Keyboard)* in class. You will receive a question sheet to be completed during class time and submitted at the end either in hard copy or electronically via email. The questions will require a working knowledge of the content, concepts and ideas from the readings and lecture(s) pertinent to copyright and to the intellectual property justifications and critiques. There will not be enough time both to do the readings and the worksheet during class so I recommend reading, highlighting and taking notes on key elements of the course material in advance. This film is available for free online and if you would like to watch it in advance.

Final Examination

There will be a final examination in the scheduled examination period which will examine you on your integrated and critical knowledge of all course materials – lectures, readings and discussions. It will be a three-hour, closed book exam comprised of definition, short answer and essay questions. The definitions will be drawn exclusively from the readings. Short answer questions will test your knowledge of the law. The essay question will examine your capacity to critically think, analyze and draw connections across different types of IP, and to form a coherent and persuasive argument using examples and evidence from the class. There will be some choice offered in each section. The exam will be discussed in more detail on the last class during the examination review.

Policy on Late Work

IP in the News Analyses are not accepted late as there is an alternate assignment available to you. The other assignment will be completed in-class.

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 discretionary accommodation during the week in which an assignment is due if we have not already arranged it.

SCHEDULE**January 7 Introduction: Thinking about IP****January 14 What is Intellectual Property and Why We (Say We) Protect It**

Please note: A working knowledge of the contents, arguments and contents of the Hettinger and Boyle readings will ground your comprehension of the entire remainder of the course. As well, we will be analyzing the news article for this week in class as a guide for the kind of analysis you will be required to do for your upcoming IP in the News assignments. Please come to class prepared.

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.

Kevles, Daniel (2016), “How to Trademark a Fruit” at Smithsonian.com

January 21 Contesting Property Thinking

Chander, Aupam and Madhar Sunder (2004), “The Romance of the Public Domain” in *California Law Review*, 92: 1331-1369.

May, Christopher (2015), “On Institutions and (Intellectual) Property” in *The Global Political Economy of Intellectual Property Rights*, London: Routledge, 33 pp.

Bear Nicholas, Andrea (2017), “Who Owns Indigenous Cultural and Intellectual Property?” in *Policy Options* (June 27)

January 28 Questions of Originality and Authorship: Copyright I

Mopas, Michael and Amelia Curran (2016), “Translating the Sound of Music: Forensic Musicology and Visual Evidence in Music Copyright Infringement Cases” in *Canadian Journal of Law and Society* 31(1): 25-46.

Jaszi, Peter (1992), “On the Author Effect: Contemporary Copyright and Collective Creativity” in *Cardozo Arts and Entertainment Law Journal* 10(2): 293-320.

News articles/video for analysis

Kaye, Ben (2015) “Jury finds Robin Thicke and Pharrell Guilt of Plagiarizing Marvin Gaye with ‘Blurred Lines’” on *Consequences of Sound* – be sure to also view the embedded video comparing “Blurred Lines” and “Got to Give it Up”

Kaye, Ben (2018) “Childish Gambino’s ‘This is America’ Draws Accusations of Plagiarism” on *Consequences of Sound*

IP in the News Analysis #1 Due Today

February 4 Thinking About Pirates: Copyright II

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

Liang, Lawrence (2011), “Beyond Representation: The Figure of the Pirate” in *Making and Unmaking Intellectual Property: Creative Production in Legal and Cultural Perspective* (M. Biagioli, P. Jaszi, and M. Woodmansee, eds.), Chicago: University of Chicago Press, pp. 167-180.

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

February 11 Screening and In-Class Film Analysis

Please ensure you are familiar with the readings from February 4, in particular, to prepare for this class. You may also want to refresh your memory of the Hettinger and Boyle readings.

Klose, Simon (dir.) (2013), *TPB AFK: The Pirate Bay Away from the Keyboard*

February 18 Spring Break**February 25 Branding Colonialism: Trademark I**

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

Ontario Arts Council (2016), *Indigenous Arts Protocols*

Intellectual Property Issues in Cultural Heritage Project, 2015. *Think Before You appropriate. Things to know and questions to ask in order to avoid misappropriating Indigenous cultural heritage*. Simon Fraser University: Vancouver.

March 4 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™ Law and the Sensory Scan” in *MCJ: A Journal of Media and Culture* 8(4).

News article/quiz for analysis

Bhasin, Kim (2012), “Can you identify these 12 brands by their trademarked colors alone?” in *Business Insider* (February 1, 2012).

Please be sure to do the quiz as part of your examination of the news article.

IP in the News Analysis #2 Due Today**March 11 Have Patents Outlived Their Utility? Patents I**

Bodrin, Michele and David K. Levine (2013), “The Case Against Patents” in *The Journal of Economic Perspectives* 27(1): 3-22.

Oliver, John (2015), “On Patents,” *Last Week Tonight* (April 19)

Tribble, Sarah Jane (2018), “Drugmakers Play the Patent Game to Ward Off Competitors”, October 2, at nbcnews.com

March 18 Owning the Human? 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.

Halbert, Debora J. (2005), “Patenting the Body: Resisting the Commodification of the Human” in *Resisting Intellectual Property*, London: Routledge, pp. 112-134.

News article for analysis:

Sataline, Suzanne and Ian Sample (2018), “Scientist in China Defends Human Embryo Gene Editing” in *The Guardian*, November 2018.

IP in the News Analysis #3 Due Today

March 25 (Re)Making Our Environment: Industrial Design

Hemphill, C. Scott and Jeannie Suk (2009), “Law, Culture and Economics of Fashion” in 61 *Stanford Law Review* 1147.

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

Objectified (2009), Dir. Gary Hustwit

April 1 When Intellectual Property Doesn’t Work ...

Rosenblatt, Elizabeth L. (2010-11), “A Theory of Intellectual Property’s Negative Space” in *Columbia Journal of Law and Arts* 34(3): 317-365.

Loshin, Jacob (2007), “Secrets Revealed: How Magicians Protect Intellectual Property Without Law” in *Law and Magic: A Collection of Essays* (Christine A. Corcos, ed.), Durham: Carolina Academic Press, pp. 123-141.

News article for analysis

Lax, Rick (2013) “The Tricky Business of Innovation: Can You Patent a Magic Trick?” *Wired Magazine*, July 8.

Alternate IP in the News Analysis Due Today (OPTIONAL)

April 8 Course Wrap-up and Examination Review

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact 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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

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: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (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 as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) www.carleton.ca/pmc

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes 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. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's Academic Integrity Policy can be found at: <http://carleton.ca/studentaffairs/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: carleton.ca/sexual-violence-support

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor 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. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>