

Course Outline

COURSE:	LAWS 3202-A – Intellectual Property
TERM:	Spring – 2017
PREREQUISITES:	LAWS 1.0 Credit from LAWS 2201, 2202, 2501, or 2502
CLASS:	Day & Time: Tuesdays and Thursdays, 11:35 am – 2:25 pm Room: Tory Building 236 (Please verify the room in Carleton Central)
INSTRUCTOR:	Dr. Sheryl N. Hamilton
CONTACT:	Office: Loeb C463 & River 4316 Office Hrs: Thursdays 9:30 – 11:00 or by appointment Telephone: Loeb office 1178 & River office 1975 Email: Sheryl.hamilton@carleton.ca

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: 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://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://carleton.ca/equity/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://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*). **Requests made within two weeks will be reviewed on a case-by-case basis.** After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website (www.carleton.ca/pmc) for the deadline to request accommodations for the formally-scheduled exam.

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/>

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/>

COURSE DESCRIPTION

From pharmaceutical company CEO's hiking the prices of popular patented drugs, to numerous high profile music artists being sued for copying the songs of other artists, to sporting franchises being challenged for their racialized/racist trademarked logos, intellectual property issues are in the news virtually every day, in Canada and around the world. These disputes impact our mediascape, our healthcare system, our built environment, our ideas of who can be a criminal, and the global information economy.

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. It is not hyperbole to suggest that this is the single-most exciting time in history to be studying intellectual property.

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;
- the dominant critiques of intellectual property regimes;
- the legal fundamentals of the major areas of intellectual property in Canada; 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.

REQUIRED TEXTS

Readings will be available through CULearn.

EVALUATION

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 discussion piece analyses (1st at 10% and 2nd two at 15% each for 40%)
3. Film analysis (in class) (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 in class, 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. To this end and to minimize the impacts of technology failure, 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 in the discussions 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 demonstrate familiarity with all of the readings for that particular week. 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, as appropriate for the DP in question. 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 analysis should not merely be answers to these questions.

- who is the author of the DP, what type of material is it (video, op-ed piece, advertisement, news article, etc.), where was it published or circulated? How do those factors effect 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? 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 that problem? How does the author understand the 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 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? Do they leave anything important out? 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 12

DPA #3 – May 30

Alternate DPA – June 6

These assignments will not be accepted late. If you miss turning one in, you should complete the Alternate DPA. You may also complete the Alternate DPA if you wish to replace one of the grades received for a previous DPA. I will take count the three best grades that you receive on DPA's towards your final grade.

Film Analysis

On June 8 we will view the documentary *Objectified* (2009) in class. You will receive a critical analysis worksheet to be completed during that class and submitted at its end. The questions will require a working knowledge of the content, concepts and ideas from the readings and lecture(s) pertinent to the issues you are discussing. There will not be enough time both to do the readings and the worksheet during class so please come prepared.

To help you with this assignment, we will do a film analysis skills workshop on May 16th where we screen, analyze and discuss the 2013 documentary *TPB:AFK*. (Please note this attendance is required

in this week, like any other, and the material covered will be examinable).

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 discussion pieces, and discussions. It will be comprised of definitions, short answers and an essay question. 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. I strongly recommend that you attend the examination review as we will review the course material and the exam format, complete example questions, and discuss best practices for writing this exam.

Policy on Late Work

DPA's are not accepted late as there is an alternate assignment available to you. The other written 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 accommodation for such requests during the week in which an assignment is due if we have not already arranged it.

SCHEDULE

May 2 Introduction

May 4 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: Kevles, Daniel (2016), "How to Trademark a Fruit" at Smithsonian.com

May 9 Contesting 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.

Doctorow, Cory (2010), "What do we want copyright to do?" in *The Guardian*, November 23.

Discussion Pieces:

Complex News (2015), "Robin Thicke's 'Blurred Lines' Copied Marvin Gaye's 'Got to Give it Up,' Jury Awards 7.3 Million" and

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

May 11 "Whacking the Mole": Copyright II

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

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

Mollen, Joost (2015), "Pirate Bay Founder: 'I have given up'" in *Motherboard* (December 15, 2015) at https://motherboard.vice.com/en_us/article/pirate-bay-founder-peter-sunde-i-have-given-up

DPA #1 is due today

May 16 Screening and Film Analysis Workshop

Please ensure you are familiar with the readings from May 11, in particular, to prepare for this class.

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

May 18 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.

Vargas, Teresa (2014), "U.S. Patent Office Cancels Redskins Trademark Registration, Says Name is Disparaging" in *The Washington Post* (June 18).

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

May 23 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).

Discussion Piece: Bhasin, Kim (2012), "Can you identify these 12 brands by their trademarked colors

alone?" in *Business Insider* (February 1, 2012).

DPA #2 is due today

May 25 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)

Discussion Piece: Pollack, Andrew (2015), "Drug goes from \$13.50 to \$750, overnight" in *The New York Times* (September 20).

May 30 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.

Shiva, Vandana (2016), "The Seeds of Suicide: How Monsanto Destroys Farming" in *Global Research* (March 9)

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

DPA #3 is due today

June 1 Class Cancelled – Professor at a Conference

June 6 (Re)Making Our Environment: Industrial Design

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.

Discussion Piece: Sherwin, Chris (2012), "Sustainability is 'The Ultimate Design Brief'" in *The Guardian* (September 17) -- also review the gallery of "Sustainable Product Design – in pictures" embedded in that article

Alternate DPA is due today (optional)

June 8 Screening and In Class Film Analysis

Ensure you are thoroughly familiar with the readings for June 6 (and any others from the course that are pertinent to thinking critically about IP in general) in order to prepare for this assignment.

Objectified (2009), Dir. Gary Hustwit

June 13 Course Wrap-up and Examination Review