

COURSE: LAWS 3202-A – Intellectual Property

TERM: Fall – 2017

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

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

INSTRUCTOR: Dr. Sheryl N. Hamilton

CONTACT: **Office:** Loeb Building C463 & Richcraft Hall 1206
Office Hrs: Wednesdays 9:00 - 10:30 am or by appointment
Telephone: Loeb Building office x1178 & Richcraft Hall office x1975
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/>

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 (*if applicable*).

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/>

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.

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<http://carleton.ca/studentaffairs/academic-integrity/>

Student Services: The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at carleton.ca/csas

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 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 for copying the songs of other artists, to celebrities displeased with how they are being "meme-d", 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." 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;
- 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.

REQUIRED TEXTS

All 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. 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. Discussion Piece 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.

Participation

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

Discussion Piece Analyses

You will note that certain non-academic readings/websites/videos etc. have been designated each week as Discussion Pieces (DPs). Over the course of the term, you are expected to submit three (3) critical analyses of specified DP's. These should be 4-5 pages in length, typed and double-spaced. Please 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.

The DP for the week when the assignment is due 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. No bibliography is required but as you will be making specific reference to sources, you should cite the author and page numbers, as appropriate. Feel free to use any accepted style guide.

Your focus should be on the DP and demonstrating that you can read it critically; the DP should be at the centre of the analysis. Use concepts, critiques and ideas from the other readings to enhance that analysis. Do not describe the readings and do not write a mini-essay on the topic of that week. This is an assignment focused on helping you hone your critical reading skills.

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 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 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? Of consumers/users? Of the law? Of creators? Of the economy? Of society? Of the public interest? Of justice? 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 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 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 using the other readings?

Each Discussion Piece Analysis (DPA) will be due as follows:

DPA #1 – October 2 (focused on the DP and readings for that week -- Questions of Originality and Authorship: Copyright I)

DPA #2 – November 6 (focused on the DP and readings for that week – Branding Colonialism: Trademark I)

DPA #3 – November 27 (focused on the DP and readings for that week – Biopatents/Biopolitics: Patents II)

Alternate DPA – December 4 (focused on the DP and readings for that week – When Intellectual Property Doesn't Work ...)

If you complete the assignment on the incorrect week's material, your assignment will not be graded.

These assignments will not be accepted late. If you miss the deadline for DPA #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 DPA. I will include the grades for your best 3 DPA's in your overall grade.

Film Analysis

On **October 30** 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 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. 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 prepare for and attend the examination review.

Policy on Late Work

DPA's 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

September 11 **Introduction**

September 18 **What is Intellectual Property and Why We (Say 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

September 25 **Contesting Property Thinking**

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

Strathern, Marilyn (2011), "Social Invention" 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. 99-113.

Discussion Piece: Bear Nicholas, Andrea (2017), "Who Owns Indigenous Cultural and Intellectual Property?" in *Policy Options* (June 27)

October 2 **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.

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"

Discussion Piece #1 is due today

October 9 **Thanksgiving Holiday – University is closed.**

October 16 **“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.

Liang, Lawrence (2011), “Beyond Representation: The Figure of the Pirate” in 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.

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

October 23 **Fall Break**

October 30 **Screening and Film Analysis**

Please ensure you are familiar with the readings from October 16, in particular, to prepare for this class.

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

November 6 **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*

Discussion Piece: 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.

Discussion Piece #2 is due today

November 13 **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).

November 20 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 Pieces: Frakt, Austin (2015), "How patent law can block even lifesaving drugs" in *The New York Times*, September 28 and

“The New Drug Wars” in *The Economist*, January 4, 2014.

November 27 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

December 4 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.

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

Alternate DPA is due today (optional)

December 8 Course Wrap-up and Examination Review

Please note this class takes place on Friday as it is the replacement day for the Thanksgiving Monday, which is a holiday.