

# **LAWS 2203 Intellectual Property II**

## **COURSE SYLLABUS**

**Class time: Tuesday 4:30-6:20 PM**

**Class location: Weldon**

**Major Paper Course**

**Credit Hours: 3**

Professor Lucie Guibault

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Drop in: on Mondays, Tuesdays, and Wednesdays, or by appointment

### **Course content**

This seminar examines the law as it relates to intellectual property, with particular focus on patents and copyrights. The study starts off by asking why we need to protect intellectual property in the first place? The answer to this fundamental question depends largely on the perspective or approach taken: law and economics, natural law, labour theory, distributive justice, or other. The justifications are not mutually exclusive, but reliance on either one of them usually leads to different practical outcomes. Not surprisingly, intellectual property rights serve as policy instruments in the hands of lawmakers to achieve different societal goals. The justifications continue to play a role when rights are exercised by rights holders and enforced by the courts. The matter becomes even more complex on an international scale in the absence of a shared international understanding of A justification of IP law, knowing that countries tend to admit one or other justification depending on their legal tradition.

The field of intellectual property is extremely vast, and the perspectives for study countless. This course is an “issues” course. You will not leave here with a comprehensive understanding of the functioning of the different intellectual property regimes. Instead, you will be exposed to, and come away with, a basic knowledge of how the different justifications given to IP laws influence the way in which the rights are shaped by lawmakers and/or exercised by rights owners.

By the end of this seminar, you should be able to articulate thoughtful arguments about:

- The distinction between the different justifications of IP rights

- The degree to which current (international and national) legal frameworks are apt to pursue different goals, i.e. to encourage innovation, disseminate knowledge or protect specific interests
- The legal and policy implications, for different stakeholders and the achievement of particular societal goals, of identifying one justification or another in support of a specific IP regime, and its implications in several areas of law
- Means of using the law as an instrument to advance the interests of specific stakeholders and/or to promote particular socio-economic or cultural goals
- The difference of approach towards the justification of IP rights in different jurisdictions

As a paper course, the objectives of this seminar extend beyond the intellectual property question. As a paper course, this seminar is also designed to help you build fundamental legal skills. These include:

- The ability to engage in relevant and effective legal research
- The ability to make a compelling and well-organized written legal argument
- The ability to engage in thoughtful dialogue amongst your peers
- The ability to effectively deliver an oral presentation of your research

## Class schedule - Intellectual Property II

Class #	Date	Topic
1	08 Jan.	<b>Introduction / Justifications of IP laws</b> Reading: Yanisky-Ravid (2017), "The Hidden Though Flourishing Justification Of Intellectual Property Laws: Distributive Justice, National Versus International Approaches" <i>Overview of the course</i>
2	15 Jan.	<b>PART I - The design of IP rights</b> IP law and international trade & development (i.e. multi-lateral, bilateral trade agreements; WIPO vs. WTO)
3	22 Jan.	<b>PART I - The design of IP rights</b> IP and technological change (i.e. copyright reform) <i>Selection of paper topic</i>
4	29 Jan.	<i>Hands-on discussion on research design, research question and methodology</i>
5	5 Feb.	<b>PART I - The design of IP rights</b>

		IP and traditional knowledge (i.e. genetic resources, traditional cultural expressions)
6	12 Feb.	<b>PART II - The exercise of IP rights</b> IP and fundamental rights (mainly free speech)
	19 Feb.	<i>Reading week - no class</i>
7	26 Feb.	<b>PART II - The exercise of IP rights</b> IP and contract law (i.e. licensing of patents or copyrights; open access licensing)
8	5 March	<b>PART II - The exercise of IP rights</b> IP and consumer protection law (access and use of digital content)
9	12 March	<b>PART II - The exercise of IP rights</b> IP and competition law (i.e. licensing in restraint of trade or monopoly position; FRAND patent licensing; collective management of copyright)
10	19 March	<i>Paper presentation</i>
11	26 March	<i>Paper presentation</i>
	<b>12 April</b>	<b>Paper deadline</b>

## Course materials

Required readings per class will be made available on Brightspace. For the first meeting, the class should read:

- Shlomit Yanisky-Ravid (2017), "The Hidden Though Flourishing Justification Of Intellectual Property Laws: Distributive Justice, National Versus International Approaches", *Lewis And Clark Law Review* 21:1

## Assessment

Your performance in the course will be evaluated according to the following breakdown: Descriptions of each element are below.

Attendance & participation	15%
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Research presentation	15%
Major paper	70%

• **Attendance & participation (15%):** The success of this seminar depends on your meaningful engagement throughout the semester. To this end, attendance is mandatory (you will not receive class participation credit for attending, but unexcused absence from any session will impact your participation grade). This grade is determined on the basis of meaningful participation in class discussion that reflects thoughtful attention to the assigned readings. In addition, each student is asked to prepare two (2) discussion questions for a designated class (selected ahead of time) to be sent to me by 9:00 AM the morning of the class, following which, I will circulate them to the rest of the class (either via Brightspace or email).

• **Abstract, outline & working bibliography (non graded):** In preparation for your major paper, you are asked to prepare an abstract, outline and working bibliography. This is a working document, subject to change according to the feedback I provide. **Due: February 11, 2019 @ 3:30 PM, by email** to lucie.guibault@dal.ca

The abstract should be no more than 500 words. It should briefly state the question(s) or hypothesis you are exploring, the legal issues you will look at in answering it/them and your tentative conclusion(s).

The outline should indicate the headings and subheadings that will structure the paper. The working bibliography should list the primary and secondary sources you plan to rely on in your paper.

The assignment as a whole should form a maximum of three (3) pages, double-spaced (except for the abstract).

• **Research presentation (15%):** Presentations will be allotted 20 minutes, followed by questions and answers from your peers. How you use those 20 minutes is up to you — audiovisual (video, podcast, etc.) may be incorporated, but should not replace your voice. (Please let me know in advance if you will require audio-visual equipment.) You may also include a handout — an abstract or a short reading that might help your peers engage with the subject matter. Your research presentation should focus not on your paper as a whole, but on a specific and narrow question. This might mean presenting the core argument (as opposed to summarizing each section of the paper) or a specific issue that you may still be struggling with. The choice is yours. (We will talk briefly about presenting your research during Class 6.) Dates will be determined by sign-up sheet in class.

• **Major paper (70%):** Due: **Thursday, April 12, 3:00 PM.** To be submitted in electronic form by email to lucie.guibault@dal.ca. Papers should be between **25 (minimum) and 35 (maximum) pages, double-spaced, Times New Roman, 12-pt, default (1-inch) margins.** Please also include a table of contents on the first page. These must adhere to the law school's "Major Paper

Guidelines” available online at: <https://www.dal.ca/faculty/law/currentstudents/jd-students/academic-regulations.html>. Further details are set out below. (We will talk in class about how to develop, research and write a major paper during Class 2) Intellectual property law contains a wide-range of subject matter and you may write on any subject that relates to the law as it relates to intellectual property. I am happy to discuss proposed topics in advance of your choice. (For this, please come see me in my office.) Please send me (by email) your final paper topic by Thursday, January 25, 12:00 PM.

### **Student Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or Ms. Dana-Lyn Mackenzie, Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

### **Submission of Papers - Policy on Use of Originality Checking Software**

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jdstudents/academic-regulations.html> Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose: a) submit copies of multiple drafts demonstrating development of their work b) submit copies of sources c) submit an annotated bibliography

### **Plagiarism**

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the <http://academicintegrity.dal.ca/>

website, and the Law School policy on plagiarism, available online at <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.