

INTELLECTUAL PROPERTY AND INFORMATION LAW¹

School of Information (SI 519) and Public Policy (PUBPOL 688)
Fall Term 2014

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<http://www.lib.umich.edu/users/mslevine>
lib.umich.edu/copyright

Wednesdays from 8:30 – 11:30 am – Room 2245 North Quad
Office Hours By Appointment
Syllabus Ver.0

This syllabus may change. I will adjust the readings and add supplementary materials in response to our class discussions. New assignments will appear and old ones may disappear. Most readings are online either freely or via your access to University of Michigan Library collections. As a convenience to you, I've included links to most items in Ctools. Please be sure to check each week's assigned readings in CTools.

Course Description

This course explores related and sometimes competing legal and policy frameworks for the development and dissemination of ideas and expression in the Information Age. The ways in which principles of free speech and expression compare and contrast with intellectual property rights will be explored as related to the advancement of knowledge and innovation, with particular focus on the impact of the Internet and new technology. The impact of other legal considerations and values on the development and dissemination of ideas and information (such as security, privacy, local control v. national and international considerations, competition, and the protection of minors) will also be examined. The course will draw upon the contexts of education, business, and government, with a special emphasis on the changing nature, roles and responsibilities of educational institutions in light of the so-called "information revolution."

Course Learning Objectives

In this course, we will examine the law and policy foundations, analyze and debate these toward the larger goal for you to have a framework for moving forward as an informed citizen and information professional. We will consider essential concepts like freedom speech and copyright law to explore essential notions of fairness in:



This syllabus is licensed under a [Creative Commons Attribution 4.0 Unported License](http://creativecommons.org/licenses/by/4.0/). (Take a look at <http://creativecommons.org/videos>.) This syllabus uses elements of Bryce Pilz's version for fall 2008 and is influenced by other previous instructors who generously shared their course materials. See <http://open.umich.edu/instructor/bryce-pilz>. I wish to thank and acknowledge Bryce Pilz, Jessica Litman, Jack Bernard, and Bobby Glushko for sharing their experience and thoughts in preparing this course.

- The related and sometimes competing legal and policy frameworks for developing and disseminating ideas and expression in the Information Age;
- How new technologies challenge past assumptions and affect current law and policy; and
- The effects of other legal considerations and values on the development and dissemination of ideas and information (such as security, privacy, government regulation, international considerations, competition, and the protection of minors).

I want you to have a firm grasp of the fundamental policy and legal frameworks. With that in mind, we will also include relevant current events into our classroom discussions in light of the dynamic nature of current and ongoing public discourse. You should complete this class with:

- A conceptual framework for understanding and applying information property and intellectual property concepts accurately.
- Familiarity with the language and concepts used by lawyers to discuss these issues and problems so that you can participate in a convincing and professional manner in policy discussions.
- Basic understandings of how intellectual property regimes are similar and different.
- Experience examining the legislative process and how these legal regimes affect commerce, freedom of speech, inquiry.

Course Format

Your out-of-class reading will include legal cases, articles, actual and proposed legislation, book chapters, and some videos. We will apply and augment these readings through class discussion, role-playing, student presentations, an occasional guest-speaker, analysis of current events, and yes, some lecture. You will write some short papers, make class presentations, and have a final exam. In the end, I will evaluate your performance based on these written and oral assignments, as well as your class participation.

Attendance

The Ford School and School of Information (and the agencies that accredit them) require that you attend class sessions in order to receive credit for this course. Your in-class participation is essential for this course, and you will miss the opportunity to learn from and teach your colleagues if you do not attend. Should circumstances force you to miss a class, please inform me as early as possible prior to that class session.

Evaluation

I will base your final grade on the following:

Assignment and Weight	Due Date & How to Submit
Participation - 40%	Throughout course
Assignment 1 – Copyright, Freedom of Expression - 10%	October 1 – Assignment 1 Topic Released in Class (and CTools)
For the first paper, you will write 750 words pages (about 2 pages, single spaced) about the basic issues of intellectual property and free expression in response to class discussion and readings; this may be a response to a hypothetical I provide.	October 4 – Assignment 1 Due -hand in paper in class and in CTools

<p>Assignment 2 - Policy Paper - 20%</p> <p>For the second paper, you will write 1500 to 2000 words (about 5 pages, single spaced) about a course-related subject we will choose together during the term.</p> <p>You will submit a prospectus for this paper during the middle of the term.</p> <p>You will list your topic on the CTools website to be shared with all students in the course.</p>	<p>October 29 – Topics Final and Announced</p> <p>November 19 – Papers Due (to provide classmates time to read your work for presentations/discussion)</p> <p>-Hand in paper in class and in CTools to share with classmates</p>
<p>Assignment 3 - Presentation on Policy Paper - 10%</p> <p>Your Policy Paper will be shared with your classmates and will be the basis for your in-class presentation (scheduled for the final weeks of the course). Your paper will be assigned as reading for the class.</p> <p>You will give a short talk and lead a discussion with your classmates and me. <i>The purpose of the presentation is to give you the opportunity to share your interests and discoveries with your colleagues.</i></p>	<p>Final 1 or 2 class sessions</p> <p>Read: How to Give an Academic Talk by Paul Edwards http://pne.people.si.umich.edu/PDF/howtotalk.pdf</p> <p>Optional: PowerPoint slides may be submitted in CTools to share with classmates</p>
<p>Assignment 4 - Final Exam/Paper: Discussion of Classmates Policy Papers and Presentations - 20%</p> <p>You will write 750 words pages (about 2 pages, single spaced) in response to a selection of your classmates Policy Papers in the context of the course subject matter.</p>	<p>December 12</p> <p>-Submit in CTools</p>

Papers

You will write several papers for this course. The papers will (1) give you an opportunity to demonstrate to what extent you understand and can communicate thoughtfully about the fundamental principles of this course; (2) provide the foundation for a discussion between you as a student and me as an instructor – as well as your classmates as colleagues; and (3) they enable you to think deeply and write critically about the aspects of intellectual property and information law that interest you.

You must submit each paper and it must be of satisfactory quality. Please submit your papers on the due date established. Late papers will be subject to a deduction in grading.

Your papers should include citations to applicable class readings as well as to outside research materials. Strong papers will offer reasoned arguments and positions on issues – rather than mere descriptions of what others have written – supported by research, evidence, and innovative thinking. You should pay careful attention to your writing style so that you convey your thoughts as clearly and effectively as possible.

Paper Format

I read each of your written assignments carefully and try to grade your work within 72 hours. Please comply with the format requirements to help me read your work quickly and efficiently. Written assignments will follow the following format:

- Single-spaced with breaks between paragraphs
- 1” margins
- Times Roman 12 point font
- Your name and assignment title in header (“Melissa Levine, Assignment 1”)
- Chicago Manual of Style citations
<http://www.chicagomanualofstyle.org>

I encourage you to use a citation tool like Zotero or EndNote. These tools will make your academic lives infinitely easier and more productive.

Presentations

You will give one brief, formal presentation related to one of the class topics we cover this term using your Policy Paper. I will work with each of you to select a subject appropriate for you and the class. You will email to me a short 4-5-sentence abstract; once approved, you will list it in CTools with your classmate’s topics.

I encourage you to use the variety of resources available to modern presenters that we are lucky to have available to us in North Quad classrooms.

You have the option of making your presentations as a 5-minute video. We will discuss this in class. The DMC on North Campus provides abundant expertise and support for multimedia projects. If you’ve never done this before, consider this a chance to try it out with lots of support from the DMC.

Class Participation

By taking this class, we are entering a kind of partnership. I will zealously prepare for and plan each class. I have spent several months selecting readings for each class that will allow us to hopefully build a vibrant class discussion, applying what we learn in those readings. Our class time is a combination of lecture and guided discussion.

I will carefully schedule a series of activities for each class that will ideally allow us to enjoy our exploration of intellectual property and information law. In exchange, I expect your diligent and enthusiastic participation in the class discussions. I also expect that you have read and understood the readings. You will have the opportunity to participate both in class and through electronic communications. While I encourage you to challenge notions that you read about or hear about during this class, you will treat the members of this class cordially and with the utmost respect.

Participation and Being ‘On Deck’

I expect you to be fully prepared for each class. In addition, you will be assigned (along with several classmates) 2 or 3 specific class dates in which you will be expected to lead part of the class conversation. For example, when you are ‘on deck’ you should be deeply prepared to discuss the facts, issues, and holdings of assigned cases, lead conversation about their implications, relate them to other aspects of the course to-date, and general news of the day as it relates to our course.

We’ll agree on your assigned dates to be on the first day of class. If you must be absent on your assigned date, you may swap dates ONCE with a classmate. You and your classmate must let me know IN

ADVANCE. I will deduct 10% from your participation grade if you miss your assigned date without prior arrangement with me in the absence of a true last minute emergency.

Please contact me as soon as you know you may be absent in case of illness or emergency.

Meetings Outside Class

I encourage you to meet with me at least once during the semester to discuss paper or presentation topics or other issues of interest (e.g., career options). I will be available immediately after class – I'll have lunch at the cafeteria in North Quad and invite you to join me for discussion. I am available during the regular business day by appointment at my office in the Shapiro Library, Room 4019. To schedule an appointment with me, email me at mslevine@umich.edu or call 615-3194. I frequently check my email, whether I am at the office or not, so that is typically the best way to contact me.

E-Mail Group and CTools

I will create an email group for our class. You can send class-related messages to the group. I also encourage you to use the CTools discussion section to forward articles or announcements that relate to the subject matter of our class. I will use the email list as a way to communicate important information to the whole class.

Accommodations for Students with Disabilities

If you think you need an accommodation for a disability, please let me know at your earliest convenience. Some aspects of this course, the assignments, the in-class activities, and the way we teach may be modified to facilitate your participation and progress. As soon as you make me aware of your needs, we can work with the Office of Services for Students with Disabilities (SSD) to help us determine appropriate accommodations. SSD (734-763-3000; <http://www.umich.edu/sswd/>) typically recommends accommodations through a Verified Individualized Services and Accommodations (VISA) form. I will treat any information you provide as private and confidential.

Resources

I work in the University of Michigan Library. Take advantage of the expertise and collections provided by the Library. If you have general questions or want direction on citation tools, there is help. Shevon is at the Library and typically has office hours at North Quad for part of the semester.[lib](http://www.lib.umich.edu)

Shevon Desai, Communication and Information Studies Librarian
<http://www.lib.umich.edu/users/shevonad>

Feedback

Besides the formal feedback required by the Ford School and SI at the end of the term, I will also seek feedback from you at some point during the middle of the term. I encourage any constructive suggestions for the course at any time during the term.

Syllabus

This syllabus is a guide. Virtually any aspect of the syllabus could change and probably will. I'll give you as much notice as possible if we're going to change something. I encourage you to bring up areas of interest and current events.

Note: Guest speakers are scheduled according to their availability and their topics may not coincide with the topic for the given week.

INTELLECTUAL PROPERTY AND INFORMATION LAW
Topical Overview and Readings

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Module 1: The Protection of “Ideas and Expression” – Fundamental Principles of Free Speech and Intellectual Property

An overview of foundational laws and policies that determine how ideas and expression are developed and disseminated in our society, with a focus on cyberspace.

- Introduction and overview of the course; review of course requirements
- Introduction to U.S. Law – the court system; U.S. Constitution; legislation
- Introduction to the subject matter of the course – why intellectual property and information law are so important.

Week 1 – September 3: Introduction and Legal Foundations

These online materials will give you an overview of the U.S. legal system to assist you in understanding the manner in which we implement and enforce intellectual property and information laws.

READ

These short articles will guide you in briefing/reading/thinking about the judicial decisions you will read in this class.

<http://volokh.com/files/howtoreadv2.pdf>

<http://www.lib.jjay.cuny.edu/research/brief.html>

This chapter is a light read to provide you with an introduction to this course. We will delve into this material in more detail in future weeks.

Lawrence Lessig, Code 2.0, Chapter on Intellectual Property, pp. 169-199
<http://pdf.codev2.cc/Lessig-Codev2.pdf>

LOOK

ALA Code of Ethics (professional values – preservation, access to information)
<http://www.ala.org/advocacy/proethics/codeofethics/codeethics>

IFLA Code of Ethics
<http://www.ifla.org/news/ifla-code-of-ethics-for-librarians-and-other-information-workers-full-version>

Week 2 – September 10: The First Amendment, Speech & Expression – Privacy and Surveillance

The First Amendment, Speech & Expression

- Origins and purpose of the First Amendment: underlying assumptions of freedom of expression.
- When and how do ideas become translated into “protected free speech”?
- To what extent does protection for speech depend on its context or content?
- Should the rules in cyberspace differ from those for other media?

READ

The Constitution
The Bill of Rights

Focus on the First Amendment

http://www.usconstitution.net/xconst_Am1.html

This reading provides a great overview of First Amendment law in the context of the Internet and universities:

Constance S. Hawke, Computer and Internet Use on Campus, Chapter 2: Free Speech in Cyberspace, pp. 41-80.

This Supreme Court case one in a line of challenges to laws passed by Congress attempting to protect minors from pornography on the Internet (Read only Justice Kennedy's Opinion):

Ashcroft v. ACLU, 542 U.S. 656 (June 29, 2004)

<http://supct.law.cornell.edu/supct/search/display.html?terms=ashcroft%20american%20civil%20&url=/supct/html/03-218.ZS.html>

The following is a fact sheet on the history and issues of Internet filters, with a focus on a case upholding a challenge to the Children's Internet Protection Act, which required federally funded libraries to engage in filtering.

Fact Sheet on Internet Filtering

<http://www.fepproject.org/factsheets/filtering.html>

This is a short article summarizing the issues of attempts to use the legal process to discover the identity of anonymous Internet posters.

The Process that "John Doe" is Due: Addressing the Legal Challenge to Internet Anonymity, David L. Sobel

<http://www.vjolt.net/vol5/symposium/v5i1a3-Sobel.html>

This short case addresses whether software constitutes protectable expression, and when national security concerns trump freedom of expression principles:

Junger v. Daly (6th Cir. 1999)

Defamation

- What interests (both private and public) warrant legal restrictions on the otherwise free dissemination of ideas and expression?
- Are there particular persons that should have more or less protection from defamation?
- Does the Internet change the way we think about defamation?

The following provides a general overview of defamation law principles – note the interesting ways defamation varies from country to country and culture to culture. How can we address these variations in a globally connected online world?

<http://en.wikipedia.org/wiki/Defamation>

The following materials describe a defamation lawsuit brought against a blogger:

<http://blogs.wsj.com/law/2008/03/13/revealed-patent-blogger-and-employer-sued-for-defamation/>

<http://www.informationweek.com/news/management/legal/showArticle.jhtml?articleID=210003653>

<http://patentlyo.com/patent/2008/08/albritton-v-pat.html>

<http://blogs.wsj.com/law/2008/02/26/bounty-hunter-outs-author-of-patent-troll-tracker-blog/>

Privacy and Surveillance on the Internet

- What principles dictate when and why it is appropriate to regulate access to information?
- How does privacy apply in cyberspace and is that different than at home or at work?
- Does technology blur traditional boundaries concerning our expectation of privacy?
- What are the rights and responsibilities of individuals, network providers, etc concerning security?
- What are the tensions inherent in the rights of privacy and speech?

The following chapter will provide a good overview of privacy issues:

Lawrence Lessig, Code 2.0, Chapter on Privacy, pp. 200-232

<http://www.codev2.cc/download+remix/Lessig-Codev2.pdf>

(also available on CTools)

This chapter provides a good background of the primary surveillance issues concerning digital technology.

N.D. Batra, Digital Freedom: How Much Can You Handle, Chapter 4: Surveillance in Cyberspace, pp. 77-122. (CTools)

LOOK

See David Cameron on regulating YouTube:

'Online pornography: Cameron's 'war' muddles two separate issues: Eradicating child abuse images is tough; protecting children from seeing pornography is even more complex,' The Guardian, July 22, 2013

<http://www.theguardian.com/technology/2013/jul/22/david-cameron-crusade-internet-pornography>

Are bloggers "press" under the First Amendment?

NCAA v. Bloggers Article

<http://www.nytimes.com/2007/06/14/sports/baseball/14blogs.html?ref=sports>

PATRIOT Act

Librarians and the PATRIOT ACT

America's Most Dangerous Librarians

<http://www.motherjones.com/politics/2008/09/americas-most-dangerous-librarians>

The USA PATRIOT Act, ALA

<http://www.ala.org/advocacy/advleg/federallegislation/theusapatriotact>

LOOK

Take a look at some of the policies that apply here at the University of Michigan to the subjects we'll discuss in this course. Peruse these to be generally aware of them. Are there other University policies you've wondered about?

Employment Oath - <http://spg.umich.edu/policy/201.17>

Freedom of Speech and Artistic Expression - <http://spg.umich.edu/policy/601.01>

Identification, Maintenance, and Preservation of Digital Records Created by University of Michigan - <http://spg.umich.edu/policy/601.08-1>

Institutional Data Resource Management Policy - <http://spg.umich.edu/policy/601.12>

Management of Copyrighted Software - <http://spg.umich.edu/policy/601.03-1>

Music Performance License Fees - <http://spg.umich.edu/policy/601.20>

Michigan Historical Collections – Acquisitions - <http://spg.umich.edu/policy/302.06>

Week 3 – September 17: Copyright Law I

Guest Speaker – The PATRIOT Act: Robert Fraser, Librarian, Mardigian Library, The University of Michigan-Dearborn

- Origins and purpose of intellectual property and law
- The bundle of rights involved in copyright
- What is the difference between ideas and tangible expression? Do these terms have distinct meaning in the digital age?
- In what ways has the Internet changed the norms and assumptions underlying intellectual property protection?
- How do the purposes of intellectual property and free expression relate to each other?
- What is the relationship between limits on intellectual property protection (e.g., fair use doctrine or patentable subject matter restrictions) to the First Amendment?

Read Copyright Basics from this list of resources from the US Copyright Office. Note the other topics covered and explore the site.

<http://www.copyright.gov/circs/>

This article provides a good copyright background in the context of digital archives.

June Besek, "Copyright Issues Relevant to the Creation of a Digital Archive," January 2003, Council on Library and Information Resources.

www.clir.org/pubs/reports/pub112/pub112.pdf

The following is a good overview of the key provisions of U.S. Copyright Law.

Jessica Litman, Digital Copyright, pp. 15-34

(But really, buy a copy for yourself and read the whole thing. You know you want to.)

This 9th Circuit case addresses fair use regarding “thumbnailed” reproductions of copyrighted materials.

Kelley v. Arriba Soft Corp., (9th Cir. 2003)

<http://caselaw.lp.findlaw.com/scripts/viewcase.pl?court=9th&party=arriba&subject=0&casenum=0>

ARL Code of Best Practices for Fair Use in Academic Libraries

<http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>

This Supreme Court case addresses secondary liability for file-sharing technology.

(Read only Justice Souter’s Opinion.)

Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 2005 U.S. LEXIS 5212 (June 27, 2005)

<http://www.law.cornell.edu/supct/pdf/04-480P.ZO>

Discuss: How was the suit discussed in this article resolved? Implications?

http://www.bostonglobe.com/business/2013/08/26/harvard-law-professor-sues-record-company-over-phenix-lisztomania/jqYkgFaXSgGpd2hL2zsXsK/story.html?p1=Well_BG_Links

Week 4 – September 24: Copyright Law II

Guest Speaker – Legislative Process: Michael Waring, Federal Relations, University of Michigan

- Does the Internet alter the rationale for copyright protection? Would you still create if you were not given the full bundle of copyrights in your creation?
- Could you find someone to publish/distribute your work if they were not granted that full bundle of rights?
- How does the DMCA impact Universities?
- What types of reform are needed to best protect free expression and/or innovation? Who is best situated to implement that reform?

Lawrence Lessig led a Harvard Legal Clinic in a challenge to the Sono Bono Copyright Extension Act. Will Mickey Mouse ever enter the public domain?

Eldred v. Ashcroft (2003)

<http://www.law.cornell.edu/supct/pdf/01-618P.ZO>

Golan v. Holder (2012)

Read the Wikipedia entry regarding the Supreme Court case of Golan v. Holder, noting the range of industry groups listed.

Read the whole opinion with special attention to the dissent and mention of the University of Michigan Library. Find an authoritative copy online.

<http://www.scotusblog.com/case-files/cases/golan-v-holder/>

http://www2.bloomberglaw.com/public/desktop/document/Golan_v_Holder_101_USPQ2d_1297_US_2012_Court_Opinion

Can a magazine release a digital compilation of its past magazine issues?
Greenberg v. National Geographic (11th Cir. 2007)
<http://www.ca11.uscourts.gov/opinions/ops/200516964.pdf>

compare with

New York Times v. Tasini
From the National Writers Union
<http://www.nwu.org/tasini-v.-new-york-times>

From Wikipedia:
http://en.wikipedia.org/wiki/New_York_Times_Co._v._Tasini

Lide, Casey, 'What Colleges and Universities Need to Know about the Digital Millennium Copyright Act', CAUSE/EFFECT, Vol. 22, Number 1, 1999.
<http://net.educause.edu/ir/library/html/cem/cem99/cem9913.html>

Read the following information concerning "orphan works".
<http://www.publicknowledge.org/issues/ow>

Orphan Works

Discussion: HathiTrust, Copyright Review Management System
-Peruse the websites for these projects for class discussion. I want you to have a general awareness
– come to class with questions or things that interested you.

Authors Guild v. HathiTrust
Find and read the both the district court opinion and opinion on appeal

From Wikipedia
http://en.wikipedia.org/wiki/Authors_Guild_v._HathiTrust

From Publishers Weekly
<http://www.publishersweekly.com/pw/by-topic/digital/copyright/article/54445-unintended-consequences-in-the-hathitrust-case.html>

Improving Copyright

Analyze These Suggestions On Improving Copyright Law
Lawrence Lessig, Free Culture, Section titled "Them, Soon," pp. 287-306
<http://www.free-culture.cc/freeculture.pdf>

LOOK

David L. Lange, Risa J. Weaver & Shiveh Roxana Reed, Golan v. Holder: Copyright in the Image of the First Amendment, The John Marshall Review of Intellectual Property, 11 J. MARSHALL REV. INTELL. PROP. L. 83 (2011).
<http://tinyurl.com/n77mw58>

Week 5 – October 1: Copyright III – Global Context

Guest Speakers (invited): Nancy Weiss, General Counsel, Institute for Museum and Library Services and Peter Hirtle, Research Fellow, Berkman Center, Harvard University and Senior Policy Advisor, Cornell University

- What are the key international conventions or treaties that address copyright?
- How do they function in practice? How do different cultural assumptions lead to different results or challenges in a global context?
- How does copyright relate to freedom of speech, inquiry, and expression as a practical matter?
- What are the current discussions at the US and international level (WIPO) regarding copyright and access to people with print disabilities? Notions of intellectual property and ‘traditional knowledge’?

READ

Berne Convention

Read the text at:

http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html

Universal Copyright Convention

Read this Wikipedia page at:

http://en.wikipedia.org/wiki/Universal_Copyright_Convention

Skim the text of the Convention for class discussion - full text at:

http://www.wipo.int/wipolex/en/other_treaties/details.jsp?group_id=22&treaty_id=208

US Copyright Office

Circular 38a International Copyright Relations of the United States
[38b Copyright Restoration Under the URAA]

WIPO

Historic Treaty Adopted, Boosts Access to Books for Visually Impaired Persons Worldwide

http://www.wipo.int/pressroom/en/articles/2013/article_0017.html

Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

http://wipo.int/meetings/en/doc_details.jsp?doc_id=241683

WIPO and Traditional Knowledge

<http://www.wipo.int/tk/en/>

This page links to information about several of WIPOs areas that touch on traditional culture and expression from genetic matter to culture expressed and conveyed generation to generation. Spend time on this site familiarizing yourself with the interests, issues, opportunities. Can you identify some of the areas of conflict or controversy? What?

Kenny Crews, WIPO Copyright Exceptions

http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

Skim this document for general familiarity.

Discuss: ‘The Right to Be Forgotten’ – do some research about this issue and come to class prepared to frame the issue and discuss the different cultural and legal norms that come into play around privacy and speech on the global Internet.

Week 6 – October 8: Patent

Guest Speakers: Jane Berliss-Vincent, Assistive Technology Manager, University of Michigan and Erin Lauridsen, Demo of Assistive Technologies

- In what ways does strong patent protection help innovation? Hurt innovation?
- What are the rationales for granting a patent monopoly? Are those rationales different for different types of technologies? Does the Internet or globalization alter those rationales?
- With respect to patent monopolies, should the courts or Congress better protect the public interest?
- Do patents make sense for inventions embodied in software? What factors would affect the decision to pursue patent protection?
- Who is best situated to provide meaningful patent reform: the courts or Congress?
- Should the public have a greater voice in patent reform issues?

READ

The following will provide a background on the main principles of patent law:
General Information Concerning Patents

http://www.uspto.gov/patents/resources/general_info_concerning_patents.jsp

and

<http://www.bitlaw.com/patent/index.html>

The US patent process

<http://www.ipwatchdog.com/2011/07/31/an-overview-of-the-u-s-patent-process/id=18460/>

Wikipedia entries for:

State Street Bank and Trust Company v. Signature Financial Group (discussing State Street and Bilski, patentability of business processes.)

Bilski v. Kappos

Then read Bilski v. Kappos (2010)

KSR International Co. v. Teleflex, Inc. (2007) and Nonobviousness

‘It’s Obvious: Supreme Court Rejects Rigid Application of “Teaching-Suggestion-Motivation” Test in Patent Cases’

http://www.wsgr.com/wsgr/Display.aspx?SectionName=publications/PDFSearch/clientalert_ksr.htm

Article discusses significance of the Supreme Court’s 2007 KSR decision which strengthens the “nonobviousness” hurdle to obtaining a patent – making it harder to get a patent and easier to invalidate an issued patent.

Leapfrog Enterprises v. Fisher-Price – See this overview and link to case at:

http://www.patentlyo.com/patent/2007/05/cafc_applies_ks.html

This is the first Federal Circuit case to apply the KSR decision. (It is shorter and easier to follow than KSR, in my opinion).

For class discussion:

The following chapter addresses some of the detriments of patents.

The Gridlock Economy, Sections on Patents, pp. 49-78, 99-102 (CTools)

Life as ‘Fact’? Think about this patent issue in the context of copyright law’s refusal to protect facts and data:

‘Human Genes Cannot Be Patented’

<http://www.cnn.com/2013/06/13/politics/scotus-genes>

‘What’s the gene that led to Angelina Jolie’s double mastectomy?’

<http://www.cnn.com/2013/05/14/health/jolie-what-is-brca>

Association for Molecular Pathology v. Myriad Genetics (2013)

http://www.supremecourt.gov/opinions/12pdf/12-398_1b7d.pdf

LOOK

Patent Licensing - A Detriment or Key to Innovation? - Podcast

Intellectual Property Practice Group Podcast Co-sponsored by the George Mason University Law School Center for the Protection of Intellectual Property,

February 25, 2013 (51 minutes)

http://www.patentlyo.com/patent/2007/05/cafc_applies_ks.html

Ogilvie, Meghan, ‘Secrecy Slowing Drug Research’, thestar.com, April 4, 2009

http://www.thestar.com/life/health_wellness/2009/04/04/secrecy_slowing_drug_research.html

For the guest presenter’s discussion, look at these (optional):

Adaptive Technology at Michigan

<http://www.itcs.umich.edu/atcs/>

Lessons from Open Source Bach: Robert Douglass and Kimiko Ishizaka of
opengoldbergvariations.org

Braille Edition of Open Goldberg Variations

<http://www.opengoldbergvariations.org/braille-edition-open-goldberg-variations>

Week 7 – October 15: Trademark, Trade Secret

Lecture via Skype – DPLA/Europeana meeting, Discussion with Greg Cram, Associate Director of Copyright and Information Policy, New York Public Library

I am part of a working group for the Digital Public Library of America and Europeana on rights metadata that will meet in Amsterdam. I plan to do our class via Skype and include guest speakers from the meeting. See:

Gore, Emily, ‘Promoting Interoperability: Working on Rights’, DPLA blog, March 1, 2014

<http://dp.la/info/2014/03/03/promoting-interoperability-working-on-rights/>

- In what ways does the rationale for trademark protection differ from copyright and patent protection?
- How has the Internet impacted the duty to police one's trademark rights? It is easier to police, but is there a concern of overly-aggressive policing?
- What types of "use" of a mark should we be most concerned about?
- Who should control the distribution of domain name rights?
- Does trademark ever conflict with freedom of speech notions?

READ

Review this overview of some of the important principles of trademark law:
<http://cyber.law.harvard.edu/metaschool/fisher/domain/tm.htm>

The following case addresses trademark infringement in metatags:
Brookfield Communications v. West Coast Entertainment (9th Cir. 1999)

Read the Wikipedia entry:

https://en.wikipedia.org/wiki/Brookfield_Communications,_Inc._v._West_Coast_Entertainment_Corp.

This case addresses trademark issues in linking.

<http://www.internetlibrary.com/pdf/Boston-Duck-Tours-Super-Duck-Tours-D-Mass.pdf>

Information on domain names:

<http://www.bitlaw.com/internet/domain.html>

This article addresses issues with "cybergripping."

<http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1124960714485>

LOOK

American Airlines Suit Against Google – Complaint (read through p. 35).

http://www.out-law.com/PDF/Lawsuit_AA_v_Google.pdf

NYTimes Article on American Airlines / Google Settlement:

http://www.nytimes.com/idg/IDG_852573C4006938800025748E006DED62.html?ref=technology

READ

Trade Secret

Review this WIPO site (go through each section)

What is a Trade Secret?

http://www.wipo.int/sme/en/ip_business/trade_secrets/trade_secrets.htm

'HTC Designers arrested for stealing trade secrets'

<http://guardianlv.com/2013/08/htc-designers-arrested-for-stealing-trade-secrets/>

Module 2: Access and Dissemination of Information

A look at various legal issues that affect how rights holders disseminate information and how and whether the public accesses information.

Week 8 – October 22: Open Dissemination and Access to Information

Guest Speakers (invited) – Jean Song, Assistant Director for Research and Informatics at the Taubman Health Sciences Library and Meredith Kahn, Publishing and Outreach Librarian – Members of the Open Access Committee, University of Michigan Library

Open Access Week Events – to be discussed in class

- What are the rights of the general public regarding access to and use of ideas and expression?
- What is the concept of the public domain (including government documents, idea of open-source movement)?
- How can open source be an effective business model?
- In what ways, if any, does the Internet make open source licenses more practical?
- What is open access? What is open source? How are they similar and distinct?
- Which of the concerns about the current state of copyright law does the Creative Commons project address?

READ

The following chapter gives an example of how non-proprietary dissemination of works can thrive: Lawrence Lessig, *Free Culture*, Chapter One: Creators, pp. 21-30
<http://www.free-culture.cc/freeculture.pdf>

This chapter serves as a good introduction to the concept of open source software: Lawrence Rosen, *Open Source Licensing: Software Freedom and Intellectual Property Law*, Preamble, xix-xxii and Chapter 1: Freedom and Open Source, pp. 1-11, Chapter 3: Distribution of Software, pp. 41-49 (Available via Mirlyn from the UM Library – the license allows for 7 concurrent readers. You may also want to purchase a copy.) In Mirlyn at:
<http://mirlyn.lib.umich.edu/Record/012132921>

This blog briefly touches on some of the success of open source business models: Blog: *Venture Capital Funding for Open Source Shows Significant Increase in First Quarter*, Mark Radcliffe
<http://lawandlifesiliconvalley.blogspot.com/2008/05/venture-capital-funding-for-open-source.html>

Here is the first case addressing the enforceability of open source licenses and confirming that open source is in fact based on intellectual property protection. *Jacobson v. Katzer*, Aug. 13, 2008
<http://www.cafc.uscourts.gov/opinions/08-1001.pdf>

University of Michigan Library LibGuide on Creative Commons
<http://guides.lib.umich.edu/creativecommons>
These articles analyze the concept of open access in the research context.
Intro to Science Commons:

http://sciencecommons.org/wp-content/uploads/ScienceCommons_Concept_Paper.pdf

Creative Commons Primer:

<http://www.locusmag.com/Features/2007/11/cory-doctorow-creative-commons.html>

NIH Open Access Policy and OSTP Policy – Open Access and Open Data
(readings tbd)

SPARC – Scholarly Publishing and Academic Resources Coalition

Peruse this website.

www.sparc.arl.org

LOOK

Generation Gap in Authors' Open Access Views and Experience, Reveals Wiley Survey

<http://www.wiley.com/WileyCDA/PressRelease/pressReleaseId-109650.html>

Week 9 – October 29: Restrictions on Access to and Dissemination of Information on the Internet: False Information, Misappropriation – Contracts, Licenses, Terms of Service

17 USC 108 in Action – ILL, Document Delivery, Licenses, and Contracts

- Should it concern us if private parties can achieve through contract what they could not otherwise achieve under the law? (e.g., protect databases, restrict otherwise fair uses?)

Read this EFF summary of a case addressing service provider liability for defamatory comments:

http://w2.eff.org/legal/cases/Barrett_v_Rosenthal/

These materials address the enforceability of the Terms of Service in Second Life: (read through p.6, and then from p.22 to the end).

Bragg v. Linden Research, Inc. (E.D. Pa. 2007)

<http://www.paed.uscourts.gov/documents/opinions/07d0658p.pdf>

<http://www.wired.com/gaming/virtualworlds/news/2006/05/70909>

The following materials address Internet issues concerning elections and politics:

<http://eqs.nictusa.com/eqsdocs/000061C5.pdf>

<http://arstechnica.com/news.ars/post/20070807-internet-vote-swapping-legal-court-finds.html>

Week 10 – November 5: Disseminating University IP - University IP Policies, Technology Transfer / Digital Archives

- Should Universities be held to a different standard in terms of their ownership or control of intellectual property? What interests should we consider in regulating how Universities disseminate their intellectual property?
- Under the UM policies, if a faculty member authors new software that creates a database system that makes it significantly easier to collect, manage, and analyze genetic data, who owns the rights in that software?

Review the about University of Michigan Tech Transfer to get a general overview of university technology transfer – review the material at the links at the bottom of this page: “Resources for Inventors, Resources for Industry, Resources for Start-Up Ventures, Resources for Students.”
<http://www.techtransfer.umich.edu/>

Review and familiarize yourself with the UM Policies on IP. We will use these in class to address some hypothetical and real-life situations.

Bylaw 3.10:

<http://www.regents.umich.edu/bylaws/bylaws03.html#10>

Technology Transfer Policy: <http://www.techtransfer.umich.edu/resources/policies.php>

Copyright Policy, SPG 601.28:

http://www.copyright.umich.edu/policy_intro.html

Schacht, Wendy, The Bayh-Dole Act: Selected Issues in Patent Policy and the Commercialization of Technology, Congressional Research Service, Congressional Research Service, December 3, 2012

<http://www.fas.org/sgp/crs/misc/RL32076.pdf>

Read *Chou v. University of Chicago*, (Fed. Cir. 2001). What kinds of disputes might arise in the university setting?

<https://bulk.resource.org/courts.gov/c/F3/254/254.F3d.1347.00-1317.html>

Principles for Emerging Systems of Scholarly Publishing:

<http://www.arl.org/storage/documents/publications/tempe-principles-10may10.pdf>

Recommended:

Library of Congress Digital Preservation Blog: The Signal

<http://blogs.loc.gov/digitalpreservation/>

Module 3: Regulation And Protection of Public Interests Through The Government And Technology

A look at how other legal doctrines, government policy, and technology design or philosophy regulate technology, especially the Internet.

Week 12 – November 19: Cybercrime and Internet Governance

Guest Speaker – Veni Markovski, Vice President, Global Stakeholder Engagement, ICANN

“Veni Markovski is responsible for relations with the UN, the UN Agencies, and the Permanent Missions to the UN. His second area of responsibilities is high-level cybersecurity cooperation.”

<https://www.icann.org/profiles/veni-markovski>

- What interests should the government consider in deciding to criminalize certain activity on the Internet?
- What cybercrimes should be federal versus state crimes? The commerce clause generally allows Congress to regulate activities that impact interstate commerce.
- Does the Internet render meaningless the interstate commerce limitation on Congress’s power?

- How does the form and execution of governance shape privacy, speech, investment and other areas we've discussed in this course?
- In what ways does the government's heavy involvement in pursuing and prosecuting cybercrimes impact our other constitutional freedoms to a greater extent than with the government's pursuit of traditional crime?

READ

This case relating to "cyberstalking" occurred close to home. *NOTE: the case addresses the nature of threats and includes violent and sexually explicit content.* It is important to read the opinion and the dissent (which contains the more explicit materials) for the purpose of class discussion.

United States v. Abraham Jacob Alkhabaz (6th Cir. 1997)

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=6th&navby=docket&no=970036p>

Listen to the NPR report "Cyber Sleuths Zero In as Web Fraud Takes Toll" linked here:

<http://www.npr.org/templates/story/story.php?storyId=18117120>

This gives an overview of the Department of Justice's efforts to prosecute cybercrimes: CyberCrimes Report (Read up to p. 32).

[http://www.cybercrime.gov/2006IPTFProgressReport\(6-19-06\).pdf](http://www.cybercrime.gov/2006IPTFProgressReport(6-19-06).pdf)

This article from a prominent legal scholar offers thoughts on crime in virtual worlds:

Kerr, Orin, Criminal Law in Virtual Worlds, Forthcoming in the University of Chicago Legal Forum

<http://papers.ssrn.com/abstract=1097392>

Kerr, Orin, 'Does the federal computer hacking law apply to a laptop not connected to the Internet?', The Washington Post, August 25, 2014

<http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/08/25/does-the-federal-computer-hacking-law-apply-to-a-laptop-not-connected-to-the-internet/>

Identifying which jurisdiction controls activity on the Internet is a difficult issue:

[http://www.thefreelibrary.com/Approaches+to+cybercrime+jurisdiction.\(Report\)-a0172599113](http://www.thefreelibrary.com/Approaches+to+cybercrime+jurisdiction.(Report)-a0172599113)

Week 13 – November 26: Internet Regulation By Government and Technology

- What constitutional principles limit the federal government's ability to regulate the Internet?
- What are the implications of technology issued by private companies regulating the Internet? Should the government care?
- How does copyright enforcement function? Why did SOPA and PIPA fail to become law?
- What is 'net neutrality' and why does it matter?

The following chapters serve as a background on Internet regulation through both government and the code itself:

Lawrence Lessig, Code 2.0, Chapter 5: Regulating Code, pp. 61-82

Lawrence Lessig, Code 2.0, Chapter 7: What Things Regulate, pp. 120-137

<http://www.codev2.cc/download+remix/Lessig-Codev2.pdf>

What is 'net neutrality'? Why does it matter?

ACLU article on Net Neutrality:

<http://www.aclu.org/freespeech/internet/26829res20060922.html>

Compare discussions of net neutrality from the following sources:

Federal Communications Commission, Electronic Frontier Foundation, American Library Association, and Comcast

Hiltzik, Michael, 'Net neutrality is dead. Bow to Comcast and Verizon, your overlords,' LA Times, January 14, 2014

<http://www.latimes.com/business/hiltzik/la-fi-mh-net-neutrality-20140114-story.html#axzz2qblyf38u&page=1>

LOOK

FCC Ruling against Comcast, released August, 20, 2008 (read through p. 34).

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-183A1.doc

Watch The Day the Music Died (Hulu)

How regulation in one area (FCC regulation of radio stations) affects other areas of commerce and creativity (music)

Week 14 – December 3: Presentations

Week 15 - December 10: Presentations - Last day of class

Read your classmates papers for the presentations.

Course review discussion: Review the syllabus, the questions posed for each week, and the slides. What have you learned? What surprised you? How had this course affected your thinking about the topic overall?