MIS6430
Intellectual Property and the Public Domain in the Age of Remix
Winter 2018

Class

Day: Monday

Time: 6:30 pm – 9:20 pm

Location: SFH173

Instructor

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Required Texts

Aoki, Keith, Boyle, James, Jenkins, Jennifer (2006). *Tales from the Public Domain: Bound by law?* Duke Center for the Study of the Public Domain. A pdf file is available at https://www.law.duke.edu/cspd/comics/digital.php

Aoki, Keith, Boyle, James, Jenkins, Jennifer (2017). *Theft of Music; A History of Music.* Duke Center for the Study of the Public Domain. A pdf file is available at https://www.law.duke.edu/musiccomic/download/

Boyle, James (2008). *The Public Domain: Enclosing the Commons of the Mind*. New Haven, CT: Yale University Press. ISBN: 978-0-300-13470-8. This book may be downloaded at https://www.thepublicdomain.org/download/ or purchased from your favorite book monger.

Lessig, Lawrence (2008). *Remix: Making art and commerce thrive in the hybrid economy*. New York: The Penguin Group. ISBN: 978-1-59420-172-1. Available for pdf download at: https://www.bloomsburyacademic.com/remix.htm

Patry, William (2009). *Moral Panics and the Copyright Wars*. Oxford: Oxford University Press. ISBN13: 9780195385649, ISBN10: 0195385640

Additional readings can be found on the course website http://moodle.oakland.edu

Other References (Intellectual Property)

The Association for Computing Machinery (2000). *Intellectual Property in the Age of Universal Access*.

Benkler, Yochai (2006). *The Wealth of Networks: How Social Production Transforms Markets and Freedom*. New Haven, CT: Yale University Press.

Bollier, David (2008). *Viral Spiral*. New York: The New Press.

Boyle, James (1996). *Shamans, Software, & Spleens: Law and the Construction of the Information Society.* Cambridge, MA: Harvard University Press.

Boyle, James and Jenkins, Jennifer (2014). *Intellectual Property: Law and the Information Society.* Durham, NC: Center for the Study of the Public Domain. Downloadable at: http://web.law.duke.edu/cspd/pdf/IPCasebook2014.pdf

Demers, Joanna (2006). *Steal this Music: How Intellectual Property Law Affects Musical Creativity*. Athens, GA: The University of Georgia Press.

Dreyfuss, Rochelle, Zimmerman, Diane L., and First, Harry (2001). *Expanding the boundaries of intellectual property: innovation policy for the knowledge society*. Oxford: Oxford University Press.

Jaffe, Adam B. and Lerner, Josh (2004). *Innovation and Its Discontents: How Our Broken Patent System is Endangering Innovation and Progress, and What to Do about It.* Princeton, NJ: Princeton University Press.

Lessig, Lawrence (1999). *Code and Other Laws of Cyberspace.* New York: Basic Books.

Lessig, Lawrence (2001). *The Future of Ideas: The Fate of the Commons in a Connected World.* New York: Random House paperback edition

Lessig, Lawrence (2004). *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: The Penguin Press.

Litman, Jessica (2001). *Digital Copyright*. Amherst, New York: Prometheus Books.

Patterson, Lyman Ray (1968). *Copyright in Historical Perspective*. Nashville, Tennessee: Vanderbilt University Press.

Samuels, Edward (2000). *The Illustrated Story of Copyright*. New York: Thomas Dunne Books

Thierer, Adam and Crews, Clyde Wayne Jr. Editors (2002). *Copyfights: the Future of Intellectual Property in the Information Age*. Washington, D.C.: The Cato Institute.

Vaidhyanathan, Siva (2001). *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity.* New York: New York University Press.

Vaidhyanathan, Siva (2004). *The Anarchist in the Library: How the Clash between Freedom and Control is Hacking the Real World and Crashing the System*. New York: Basic Books

Some Interesting Websites

https://www.publicknowledge.org/ - Public Knowledge, a public advocacy group concerned about intellectual property issues.

https://creativecommons.org/ - The Creative Commons, a non-profit organization dedicated to providing a range of protections for artists and authors.

https://www.epic.org/ - EPIC is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.

https://www.patentcommons.org/ - A project that documents the boundaries of the software commons so that developers can identify resources and understand their patent commitments.

https://www.cdt.org/ - A non-profit organization aimed at promoting democratic values as they relate to a number of technological issues, in particular the Internet. A good resource for both privacy and intellectual property issues.

https://www.eff.org/ - Advocacy group devoted to the protection of individual digital rights.

https://www.benkler.org/wealth_of_networks/index.php?title=Main_Page – Wiki for Benkler's book *The Wealth of Networks*. This wiki links to pdf files of the book itself in addition to providing links to related materials.

https://www.techdirt.com – Current news on the IP front with a biased presentation that is compatible with William Patry's view.

https://www.ethanhein.com – Interesting blog on music and other topics.

Course Objectives

One way of characterizing the recent past is through a description of advances in information technology. Moore's law, roughly a doubling of processor power every 18 months, has resulted in greater functionality for any products based on information technology. Another less obvious effect has been that commonly used products have called into question various things that had previously been taken for granted. For example, Photo Shop™ causes us to suspect the veracity of a photograph as evidence that something existed or took place.

The disruptive effects of IT have created tremors in the realm of so-called intellectual property. Among the drivers of change to our notions of copyright and patents are: a) the technological capability to copy text, sound, and video widely, b) the development of inexpensive software for producing high quality music, film, and printed material, c) the use of the internet for producing products through collaboration, and d) the use of networks for distributing various products: software, music, film, and text. Whereas a century ago, only big business was concerned with copyrights, patents, and trademarks, today every day people are affected. IT has made it possible for many of us to produce the information based products that characterize the present and foreseeable future.

This calls us to examine our notion of the seemingly obvious question 'What is property?' especially when trying to understand a term such as intellectual property. Some industry groups would like to go back to a simpler time and a simpler understanding so that we could all agree that *downloading is stealing*. But the genie is out of the bottle. To make matters more complicated, our understanding of such concepts as property and the role of law are culturally conditioned. We need to consider not only what property is, but how it came to be and why it is important.

Another consideration is the importance of patents and copyrights to the economy. One clear trend over the past 50 years has been the expansion of intellectual property's sway in the form of: a) more filings of patents, b) wider applicability of trademarks, c) more litigation over patents and copyrights, d) enlarged scope of patents in terms of what can be patented, e) enlarged scope of copyrights, and f) a lengthened copyright term. Another trend over the same period has been an increase in the extent that IT is part of the products and services that make up our economy. As part of the US Constitution, Congress was given the ability to make laws concerning patents and copyrights, "to promote Science and the useful arts." Thus patents and copyrights must be considered as to whether they stimulate innovation and economic growth.

Much of the remarkable development of information technology that has taken place since the advent of the computer has been carried out by individuals preoccupied with the successful solution of complex technical problems. The focus on the technical has led many to ignore the serious ethical issues that surround the proliferation of information technology. In addition, since

many technological developments have profound economic implications, laws reflecting the interests of particular nations and that affect the use of these technologies have been enacted. One area where this plays out is in the realm of privacy and intellectual property. It should be clear that decisions made with regard to security, privacy, and intellectual property involve core values fundamental to a liberal democracy. Technological design choices are not neutral. They may support or even enforce one set of values over another.

Some of the aims of the course include examination of the following questions:

1) How does *intellectual property* differ from physical property? Is property really the best way to think of copyrights and patents?
2) How do changes in the information technology landscape affect intellectual property?
3) What is the relationship between copyrights and patents, and innovation?
4) Does the DMCA or other strong IP regimes really stimulate the development of new products?
5) What should be the role of law enforcement agencies be with respect to real or potential infringements of copyrights, patents, and trademarks?
6) How should we view global differences in the way IP laws are enacted and enforced?
7) Since laws pertaining to *intellectual property* are socially constructed, how can we best create a more just and appealing society?

Conduct of the Course

The course will include lectures, group discussions, an individual paper and presentation, case analyses, classroom discussions, and a quiz. Three classes will meet online using moodle. You can access moodle at moodle.oakland.edu. You will find instructions for using moodle there – your user name and password are your OU email user name and password. At the beginning of the semester, you will be organized into small groups. Together with your group, you will carry out projects and discuss the class material. For class sessions held in the assigned classroom, the instructor will present the topical material related to the course readings. Students will be expected to discuss issues related to the reading material both in their small groups and also together with the entire class. Twice during the semester, students will be expected to turn in a journal that includes responses to study questions and other issues that come up during the semester. Study questions, the syllabus, and reading assignments will be available on the Web at the moodle course site.

Students will also be required to write short (3 –5 pages) papers on topics to be announced later. In addition, there will be online group projects in the form of threaded discussions. The

individual paper as well as any shorter paper should conform to some accepted editorial style, APA for example. Plagiarism will not be tolerated with penalties both to the student's grade and in accordance with university policies.

Grading

Grades will be determined approximately as follows:

Journal ---------- 20%

Exam ---------- 20%

Individual Projects ---------- 40%

Group Participation ---------- 20%

The average grade for the class will most likely be a 3.4 or above. The final grade will be based on your score relative to other members of the class. It will be determined after all the points for the different assignments are totaled by using the following formula:

Final grade = Xg + (S-Xt)/(H-Xt) * D

Where: Xg = Average grade point for the class, S = the student's total points, Xt = Average total points for the class, H = the total points for the student with the highest total points, and D = the difference between 4.0 and Xg.

COURSE SCHEDULE

Date	Topic	Reading Assignment
1/8	Introduction to course; Rip Remix video	RX Preface - 1, MP Intro, PD Preface - 1
1/15	MLK Day; Tales from the Public Domain online	Bound by Law comic; Discussion forum by group
1/22	Brief history of copyrights and patents; Moral rights	RX 1-4, PD 2-4, MP1; Fisher articles
1/29	What is property? The commons and the anti-commons; Copyright and the Digital Millenium Copyright Act (DMCA)	RX 1-4, PD 2-4, MP1 – 3; Fisher articles; Hess & Ostrom; Unintended consequences of the DMCA
2/5	Discussion forum online	Theft of Music
2/12	Growth of IP, Metaphors and the Law, the nature of property; What is property? The commons and the anti-commons; Copyright and the Digital Millenium Copyright Act (DMCA) continued. Work for hire; Section 1201	MP 4-6; Open Access; Final paper assignment; *I've got the music in me*
2/19	Winter Break	
2/26	What's at stake? Economic Impacts, economic choices. Mashups and sampling, Non-practicing entities, i.e. patent trolls; Reforming the patent system	RX 5-8, PD6, *Nanolaw with daughter*
3/5	The commons online	Stiglitz webcast, PD 3; Julia Reda; update on the EU copyright reform
3/12	Economic impacts – software, databases	PD8 - 9
3/19	Exam	
3/26	IP and innovation – haute cuisine, comedy, and fashion.	Norms based IP
4/2	Moral panics and other pathologies; proposed solutions	MP 7-9, RX9 – 11, PD8, 10
4/9	Project/paper presentations	
4/16	Project/paper presentations	2nd half of journal due
	No final exam	

RX = Remix
PD = The Public Domain
MP = Moral Panics