

Loyola Law School
INTERNATIONAL INTELLECTUAL PROPERTY LAW
Spring 2018

Basic information, overview, and syllabus

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BASIC INFORMATION

- Class room:** Burns 220
- Class hours:** Mondays and Wednesdays, 6-7pm, but *let's discuss*
(*why not just a Monday evening seminar?*)
- Make-up classes:** *Extended classes on 21 March, 28 March, and 11 April*
- Materials:** All course readings will be posted on TWEN. Depending on interest, paper course packs will be available.
- Email/Internet:** Please send any emails on weekdays. If you don't receive a response within 5 days (or sooner), I recommend sending the message again.

INTERNET USE DURING CLASS IS STRICTLY FORBIDDEN.

- Evaluation:** Grading in the course will be based on a final take home examination. In addition, class participation may be used to adjust grades upward or downward.
- As part of class participation, absolutely NO internet use is permitted in the class. *Students found to be using the internet during class may be referred to the Academic Standing Committee and/or Professor Hughes reserves the option of lowering of the final grade of such a student.*

OVERVIEW

The multilateral, international legal system for the protection of intellectual property began in the late 19th century with two treaties – the “Berne Convention” for copyright and the “Paris Convention” for patents and trademarks. The administrative bureaux for these two treaties evolved into what is today the World Intellectual Property Organization (WIPO).

But this multilateral system took a quantum leap in importance – and public profile – with the integration of substantive intellectual property standards into the international trading system. The “Trade-Related Aspects of Intellectual Property” Agreement (TRIPS) both modernized the Berne and Paris Convention standards and brought those standards into the World Trade Organization (WTO) established in the mid-1990s. The WTO provides a binding dispute resolution process when countries do not abide by the legal norms established in TRIPS.

The establishment of IP “jurisdiction” in the WTO has also created a bifurcated international intellectual property system in which WIPO separately continues to administer several other IP treaties not integrated into WTO, WTO’s dispute settlement mechanism decides key issues under the Berne and Paris Conventions, and new issues of intellectual property protection are debated in both organizations. Meanwhile, IP issues are also discussed and debated in other fora – the World Health Organization, the Food and Agriculture Organization, UNESCO, regional organizations, and bilateral trade negotiations.

We will begin the course with a review of TRIPS, the two dominant multilateral IP treaties on which it is based (the Berne and Paris Conventions), and the dispute resolution process at the WTO. We will then turn to a series of modules studying specific unsettled issues within the international intellectual property system. Some of these issues will involve interpretation and development of the TRIPS standards; some will invoke issues intentionally left unresolved in TRIPS; some will involve new agreements establishing new legal norms beyond Berne, Paris, and TRIPS.

SYLLABUS

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Overview plan

1. **THE MULTILATERAL FRAMEWORK FOR IP NORMS**
2. **THE SPIRITED DEBATE ABOUT GEOGRAPHICAL INDICATIONS (GIs)**
3. **EXPANSION OF AND LIMITATIONS IN COPYRIGHT LAW**
4. **PATENT EXCEPTIONS AND ACCESS TO MEDICINES**
5. **THE EMERGING NORMS OF IP ENFORCEMENT**
6. **TRIPS+ STANDARDS AND THEIR ENFORCEMENT IN PREFERENTIAL TRADE AGREEMENTS AND INVESTMENT TREATIES.**

1. **THE MULTILATERAL FRAMEWORK FOR IP NORMS**

COURSEPACK #1

Preamble and Article 1-10, 64(1), 65, 66, and 68 of the Trade-Related Aspects of Intellectual Property [TRIPS] Agreement (1994)

Articles 2, 7-12 of the Berne Convention for the Protection of Literary and Artistic Works, last revised at Paris on 24 July 1971 and amended on 28 September 1979. [Berne Convention.pdf]

Articles 1-3, 4^{bis} – 5^{quater} of the Paris Convention for the Protection of Industrial Property, last revised at Stockholm on 14 July 1967 and amended on 28 September 1979 [Paris Convention.pdf]

Articles 2, 4, 6-8, 10, 12(7-9), 16, 17(1-3), 19, 20, 21(3-5), and 22(1-2) of the **Understanding on Rules and Procedures Governing the Settlement of Disputes** [Dispute Settlement Understanding.pdf]

Press release, WTO, *The least developed get eight years more leeway on protecting intellectual property* (press release and TRIPS Council decision), 11/12 June 2013

WIPO, List of WIPO-Administered Treaties, available at <http://www.wipo.int/treaties/en/> [2014 WIPO treaties list.pdf]

2. **THE SPIRITED DEBATE ABOUT GEOGRAPHICAL INDICATIONS (GIs)**

Read Articles 22-24 of the **TRIPS Agreement (1994)**

COURSEPACK #2

Optional reading:

Justin Hughes, *Champagne, Feta, and Bourbon – the Spirited Debate about Geographical Indications*, 58 HASTINGS LAW JOURNAL 299 (2006). Also can be downloaded from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936362

Required reading:

Articles 1 – 8 of the **Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration**, of October 31, 1958, revised at Stockholm (July 14, 1967) and as amended as of September 28, 1979.

WIPO, Contracting Parties, Lisbon Agreement

Articles 2, 5-8, 12-14 of **EU Council Regulation (EEC) No. 2081/92** of 14 July 1992 on the protection of geographical indications. This regulation has been replaced (by Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs), but we are reading these articles to understand the Australia/US claim against the EU.

WTO Dispute Settlement DS174, *European Communities – Protection of Trademark and Geographical Indications for Agricultural Products and Foodstuffs*, Panel Report Circulated 15 March 2005.

Commission of the European Communities v. Federal Republic of Germany, European Court of Justice, Case C-132/05, Decision of 26 February 2008

USDA Foreign Agricultural Service, **European Union Trade Policy Monitoring – EU Releases final list of Geographical Indicators for Cancun**, August 28, 2003, **GAIN Report Number: E23165**

Articles 1-4, 6-13, and 15-16 of the **Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications**, as adopted on May 20, 2015.

United Nations Conference on Trade and Development (UNCTAD), *Benin cassava flour makers seek Geographical Indication*, 8 December 2017

Time Lince, *OAPI steps up efforts to expand scope of geographical indications across sub-Saharan Africa*, *WORLD TRADEMARK REVIEW*, 4 December 2017.

3. EXPANSION OF AND LIMITATIONS IN COPYRIGHT LAW

Read Article 13 (as well as Articles 17, 26, and 30) of the **TRIPS Agreement (1994)**

COURSEPACK #3

Preamble and Article 1-8, 10-12 of the **WIPO Copyright Treaty** (adopted in Geneva on 20 December 1996)

Preamble and Article 5-8, 10-11, 13-16 of the **Beijing Treaty on Audiovisual Performances** (adopted in Beijing on 24 June 2012)

17 U.S.C. 110(5)

WTO Dispute Settlement DS160, *United States – Section 110(5) of the Copyright Act*, Panel Report Circulated 15 June 2000 [US Music Licensing DS 160 EDIT.doc]

Preamble and Article 1-7 of the **Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind** (adopted in Marrakesh on 28 June 2013)

Proposal for a **EU Regulation of the European Parliament and of the Council on the cross-border exchange between the Union and third countries of accessible format copies**, COM(2016) 595 final, 2016/0279 (COD), 14 July 2016.

4. EXCEPTIONS IN PATENT LAW AND THE ACCESS TO MEDICINES DEBATE

Read Articles 27(1), 30, and 31, of the **Trade-Related Aspects of Intellectual Property [TRIPS] Agreement (1994)** from course pack #1

COURSEPACK #4

Coenraad Visser, *Patent Exceptions and Limitations in the Health Context*, Annex V to WIPO Report, EXPERTS' STUDY ON EXCLUSIONS FROM PATENTABLE SUBJECT MATTER AND EXCEPTIONS AND LIMITATIONS TO THE RIGHTS, SCP/15/3 (2 September 2010)

WTO MINISTERIAL COUNCIL, **DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH**, WT/MIN(01)/DEC/2, 14 November 2001 (“The Doha Declaration”)

WTO GENERAL COUNCIL, **IMPLEMENTATION OF PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH**, WT/L/540, 2 September 2003

The WTO General Council Chairman’s Statement, 30 August 2003

New Article 31.1 and Annex of the **Trade-Related Aspects of Intellectual Property [TRIPS] Agreement** (1994, as amended on 23 January 2017)

Parliament of Canada, Parliamentary Research Branch, **Legislative Summary of Bill C-9: An Act to Amend the Patent Act and the Food and Drug Act**

WTO Dispute Settlement DS114, *Canada – Patent Protection of Pharmaceutical Products*, Panel Report Circulated March 17, 2000

35 U.S.C. 271(e)

Article 27 of the Luxembourg Agreement on Community patents, 89/695/EEC, Done at Luxembourg on 15 December 1989

Article 69 of the Patent Law of the People’s Republic of China

Article 69 of the Japan Patent Act

Proposal from Brazil, WIPO Standing Committee on Patents, January 2010, SCP/14/7

5. THE EMERGING NORMS OF IP ENFORCEMENT

Read Articles 41, 42-45, 50, and 61 of the **TRIPS Agreement (1994)**

COURSEPACK #5

WTO Dispute Settlement DS125, Greece – Enforcement of Intellectual Property Rights for Motion Pictures and Television Programs, Request for Consultations by the United States, WT/DS125/1, 7 May 1998.

WTO Dispute Settlement DS125, Greece – Enforcement of Intellectual Property Rights for Motion Pictures and Television Programs, Notification of Mutually Agreed Solution, WT/DS125/2, 26 March 2001.

WTO Dispute Settlement DS362, China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights, Panel Report, 26 January 2009.

Carsten Fink & Patrick Reichenmiller, *Tightening TRIPS: The Intellectual Property Provisions of Recent U.S. Free Trade Agreements*, World Bank Trade Note No. 20, 7 February 2005.

6. TRIPS+ STANDARDS AND THEIR ENFORCEMENT IN PREFERENTIAL TRADE AGREEMENTS AND INVESTMENT TREATIES.

COURSEPACK #6

Henning Grosse Ruse – Khan, *Protecting Intellectual Property Under BITS, FTAs and TRIPS: Conflicting Regimes of Muturla Coherence?*, Max Planck Institute for Intellectual Property and Competition Law Research Paper No. 11-02 (2011). Please read pages 1-23.

Chapter 17 (Intellectual Property Rights) of **2004 Australia-United States Free Trade Agreement**. Please read Parts 17:1 [General Provisions], sections 1-8, 12; 17:2 [Trademarks], sections 1-5, 8, 11-12; 17:4 [Copyright], sections 7-9; 17:11 [Enforcement of IP Rights], sections 1-4, 16, 23, and 26.

European Commission, *Press Release, EU signs Economic Partnership Agreement with Southern African countries* (Brussels, 10 June 2016)

2016 Economic Partnership Agreement between the European Union and the South African Development Community, Protocol 3 (“Geographical indications and trade in wines and spirits”) Read Articles 2-6, 8, 11 and skim the “Annex” listing all the South African and European geographical indications specially protected under the agreement.

Notice of Claim Under the Australia/Hong Kong Agreement for the Promotion and Protection of Investments, *Philip Morris Asia v. Commonwealth of Australia*, 16 July 2011

Australia’s Response to the Notice of Arbitration, *Philip Morris Asia v. Commonwealth of Australia*, 21 December 2011

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