

International Intellectual Property Syllabus
Prof. Kumar, Spring 2020
Email: skumar@central.uh.edu
Assistant: Harold Bradford

Overview

This course surveys the variety of treaties and laws governing intellectual property (IP) rights worldwide. The course therefore includes study of the major multi-lateral trade treaties governing IP rights protection, such as the WTO and TRIPS agreements. In addition, the course will compare various relevant national laws and institutions to see how different social and economic policy goals drive differences in laws governing copyrights, patents, trademarks, and related rights. Although this class will cover various forms of IP rights, we will spend more time on patents and copyright.

Reading

- **Casebook: Goldstein & Trimble, International Intellectual Property (5th Ed., West).**
If you use an older edition of the book, you do so at your own risk.
- **Statutes**
 - **TRIPs Agreement:** https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm
 - **Berne Convention:** https://www.wipo.int/treaties/en/text.jsp?file_id=283698
 - **Rome Convention:** https://www.wipo.int/treaties/en/text.jsp?file_id=289757
 - **Paris Convention:** https://www.wipo.int/treaties/en/text.jsp?file_id=288514

Prerequisite: IP survey, Patent Law, or Copyright Law is helpful, though not required.

Attendance Policy

I will take attendance by distributing a roll sheet at the beginning of each class. Each student should personally initial by his or her name for that class session. It is your responsibility to ensure that you have initialed the roll sheet before you leave the classroom each day. Students who do not sign the role sheet are deemed to have been absent.

Please note that you are responsible for managing your absences from class and ensuring that your total number of absences does not exceed the threshold for the class. An absence is an absence, regardless of the reason, except for those covered by the University and Law Center religious holiday policy. Students who exceed six (6) absences will be reported to the Associate Dean and can be dropped from the class.

If you need to miss a single class, please do not e-mail me. Rather, e-mail a friend to see what you missed. Do let me know, however, if you need to miss several classes in a row.

Participation

Students with poor class participation will have their final grade dropped by 1/3 of a letter grade. The decision to drop a grade for participation is at my discretion and is non-negotiable. A drop in class participation can result from a combination of unpreparedness, not paying attention in class, and absences (even if you are within the six-absence limit). In rare circumstances, a student may go up a 1/3 of a letter grade for making a substantial contribution to the class. Note that volunteering every class does not constitute a substantial contribution—quality, not quantity matters!

Remote Attendance via Zoom

Students will have six (6) times during the semester where they can attend class remotely. To connect, go to <https://uhlc.zoom.us/j/148190454>. I will mark you as “Remote” on the roll sheet for these days, and they will not count as an absence. If work commitments or exceptional circumstances prevent you from attending this class in person for the duration of the semester, I will authorize 100% remote attendance on a case-by-case basis.

To participate via Zoom, there are several requirements that must be met:

- You must be logged in with a computer (not a phone) with your video camera turned on at least 5 minutes before class starts to be counted present. If your video isn't on at least 5 minutes before class starts or if you log in later, you will be marked absent.
- You must have a headset that works (i.e., the ear buds + microphone that typically come with a cellphone) and may NOT rely on your computer's built-in microphone.
- You must identify yourself with your first and last name in the Zoom videoconferencing software.
- You must present yourself professionally in the video stream, both in attire and in conduct. No attending class from your car or from your bed.
- You must be able to fulfill your responsibilities if called on to discuss a case. If you are unprepared, you need to mention this in the chat box at least 5 minutes before class starts.
- You must keep yourself muted when you are not speaking.
- If you have to leave Zoom for more than 15 minutes during the lecture, you need to e-mail me and let me know after class so that I can mark you absent.

Class Website

During the first week of class, a class website will be set up on Lexis, where I will post updated syllabuses and handouts. To enroll, on the LexisNexis for Law School Page, select the “Add a Course” link found on the bottom right-hand side of the page. Next, select “Sapna Kumar” under “Select Faculty,” and select “2020 International IP” for the course to enroll. If you have any questions on accessing the class website, contact our Lexis representative Billy Saqr (billy.saqr@lexisnexis.com).

Audio Recordings of Lectures

I will record all of the lectures and upload them to the class website. These recordings are for class preparation purposes only, and they are not to be reproduced or redistributed in any manner. Note that recordings sometimes fail or are lost before they can be uploaded. Also, occasionally sensitive material will be discussed that will not be recorded. Please note that you do not have authorization to make your own recordings of class lectures.

Assessment Method

There will be a three-hour open book and open notes exam. You can bring any books or printed materials onto the exam. The format will be essay questions and/or short answer.

Learning Outcomes

From taking this course, students will be able to demonstrate: (1) a detailed knowledge of the international law of IP as it is included in the major international IP law treaties; (2) an understanding of the basic principles of public international law; (3) knowledge of the

comparative law of IP, including examples of differences in selected doctrines and application of the doctrines in the United States, the European Union, and other major jurisdictions; (4) a detailed knowledge of the transnational aspects of IP law, including the application of conflict-of-laws doctrines in IP law disputes; (5) an ability to apply a normative framework to questions of global IP protection in order to make policy arguments about the desirability of various treaty provisions and local laws; and (6) ability to detect and identify international and transnational issues in IP transactions and disputes.

Miscellaneous Class Policies

- **Panel system.** You will be assigned to a panel before the second day of class, and are responsible for discussing the assignment when your panel is on call. If you know that you will be absent when your panel is on call, please trade with someone on another panel. If you are unexpectedly absent on your panel day, please contact me so I can give you another panel assignment for that two-week period.
- **Laptop Use.** Use of laptops is permitted, with the caveat that studies indicate students learn more when they handwrite notes. Although I do not prohibit web surfing, if your behavior becomes distracting to other students or to me, you will risk a 1/3 letter grade drop for poor participation.
- **Pronouns.** Please reach out to me in person or by e-mail if you have preferred pronouns or a preferred name that you would like for me to use. I will try my best to honor your preferences. Please attribute any lapses to failings of memory and do not hesitate to correct me if I make any mistakes.

The University of Houston Provost's Office has asked all faculty in professional schools to include the following language on class syllabuses:

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html

Reading

Each class will cover one square bullet point worth of material. G&T refers to the 5th edition of the casebook. For the last day of class, there will be a review based on questions submitted in advance.

The syllabus will be updated several times throughout the semester—an up-to-date version can always be found on the Lexis class website.

A. Principles and Institutions

- **Introduction and overview of types of IP and territoriality.** G&T 1–13.
- **Territoriality (cont.), Introduction to National Treatment.** G&T 14–24.
 - **Case:** Phil Collins v. Imtrat Handelsgesellschaft mbH
 - **Treaties:** TRIPs Art. 3, Berne Art. 3–5, Paris Art. 2–6, Rome Art. 4
- **Choice of Forum.** G&T 25–33 (through N.5), 35–44.
 - **Cases:** London Film Productions v. Intercontinental Comm.; Mecklermedia v. D.C. Congress
- **Choice of Law, Res Judicata, and Collateral Estoppel.** G&T 52–61, 70–77.
 - **Cases:** Itar-Tass Russian News Agency v. Russian Kurier Inc.; Cuno Inc. v. Pall Corp.
- **Recognition and Enforcement of Foreign Judgments; Economics, Tech. & Development: Traditional Knowledge.** G&T 77–90; 108–115.
 - **Case:** Sarl Louis Feraud Int. v. Viewfinder
- **Trade Principles and Processes: The TRIPs Agreement.** G&T 125–153.
 - **Treaties:** TRIPs Art. 1, 2, 7, 8

B. Copyright Law and Neighboring Rights

- **Territorial Reach of Copyright Law; Entitlement to Protection.** G&T 187–212
 - **Cases:** Subafilms v. MGM-Pathe Comm.
 - **Treaties:** TRIPs Art. 9 and 10
- **Protected Subject Matter, Ownership & Term.** G&T 206–220, 225–235.
 - **Cases:** CCH Canadian Ltd. v. Law Society of Upper Canada
 - **Treaties:** Berne Art. 1 – 2bis, 15; TRIPs Art. 10
- **Ownership & Term, Econ. Rights and Remedies: Dissemination in Tangible Form.** G&T 237–250, 256–259 (n.2–5), 259–268.
 - **Cases:** Le Brun v. SA Braesheather, American Broadcasting Corp., Inc. v. Aereo, Inc.
 - **Treaties:** TRIPs Art. 11; Berne Art. 8, 9, 11, 12, 14
- **Econ. Rights & Remedies: Dissemination in Tangible Form (cont.).** 269–296.

- **Cases:** Svensson v. Retriever Sverige AB
- **Econ. Rights & Remedies (cont.)**
- **Econ. Rights & Remedies (cont.)**
- **Moral Rights**

C. Patent Law

- **Introduction & Territorial Reach of Patent Law.** 35 U.S.C. § 271(f), G&T 415–436
 - **Cases:** Microsoft v. AT&T
- **Territorial Reach of Patent Law (cont.): High seas and outer space.** Reading TBA
 - WesternGeco v. Ion Geophysical
- **Requirements for Protection: Statutory subject matter & standards.** G&T 436–465
 - **Cases:** Novartis AG v Union of India, Stein Associations v. Heat and Control.
- **Requirements for Protection: Inventive Step & Industrial Application.** G&T 465–494
- **Inventorship & Patent Ownership; Rights.** G&T 494–517
 - **Cases:** Boston Scientific Scimed v. Medtronic; Transocean Offshore Deepwater Drilling v. Maersk; Merck v. Stephar
- **Limitations on Rights.** G&T 517–543
 - **Cases:** Canada, Patent Protection of Pharm. Products
- **Limitations on Rights (cont.); Infringement & Remedies.** G&T 543–568.
- **TBA**

D. Trademark Law & Geographical Indications

- **Territorial Reach of Trademarks; Protected Subject Matter.** G&T 580–609
 - **Cases:** McBee v. Delica; Otokoyama v. Wine of Japan
- **Geographical Indications.** G&T 609–633
 - **Case:** Federal Republic of Germany v. Comm. of the Euro. Communities
- **Use and Use Priorities.** G&T 633–658
 - **Cases:** McDonald's Corp. v. Joburgers Drive-Inn Restaurant; Person's Co. v. Christman
- **Registration and Registration Priorities; Registration of Domain Names.** G&T 659–691.

- **Cases:** Imperial Tobacco v. Philip Morris; Barcelona.com v. Excelentísimo
- **Ownership; Rights & Limitations on Rights.** G&T 692–727.

Last day of class: Review. Please submit questions and topics in advance of the review.