

Ethics and Information Technology
Summer 2010
Prof. Hull / Denny 216 / TWR 10-12:30

Description: The widespread social diffusion of new information technologies has led to a number of novel ethical issues on topics ranging from privacy to security to how we relate to each other socially. This course aims to illuminate some of these issues through a sustained study of one set of topics: intellectual property. Almost everything we do in the digital age involves making a copy. Almost everything we use involves multiple patents. And the average American sees several thousand trademarked logos a day. In a basic way, intellectual property law structures our everyday lives. You probably interact with intellectual property law more than you do traffic laws. So what is this ubiquitous form of law? What is it good for? Why do we have it? We will examine normative justifications of intellectual property law, with a goal of understanding what values this law might try to advance, what moral limitations it ought to respect, and how those values and limitations can be expressed in specific policies.

Warning: In the summer, a day is a week! We'll be doing quite a bit of reading. A lot of it is from law journals, since that's where the action is for IP theory. Law journal articles generally read faster per page than philosophy articles, once you get the hang of them.

Readings (all are on Moodle):

Benkler, Yochai. "Through the Looking Glass: Alice and the Constitutional Foundations of the Public Domain," *Law and Contemporary Problems* 66 (2003), 173-224.

Coombe, Rosemary J. "Legal Claims to Culture in and against the Market: Neoliberalism and the Global Proliferation of Meaningful Difference," *Law, Culture and the Humanities* 1 (2005), 35-52.

Hardt, Michael and Antonio Negri, "Life on the Market," in *Multitude: War and Democracy in the Age of Empire*. New York: Penguin, 2004, 178-188.

Hetcher, Steven. "Tushnet Review," *William and Mary Law Review* 51 (2009), 1-15.

Introna, Lucas. "Maintaining the Reversibility of Foldings: Making the ethics (politics) of information technology visible," *Ethics and Information Technology* 9 (2007), 11-25.

Katyal, Sonia K. "Semiotic Disobedience," *Washington University Law Review* 84 (2006), 489-571.

Locke, John. *Second Treatise on Government*, ch. 5, on course page (note the paragraph numbering; that's how it's referenced)

Marx, Karl. "The Fetishism of Commodities," in *Capital Vol. I*, on course page. Taken from: <http://www.marxists.org/archive/marx/works/1867-c1/ch01.htm#S4>

Marx, Karl. "Estranged Labor," from his *1844 Manuscripts*, pp. 28-35, on course page. Taken from: <http://www.marxists.org/archive/marx/works/download/pdf/Economic-Philosophic-Manuscripts-1844.pdf>

Mill, John Stuart. *Utilitarianism*, ch. 2, on course page.

Posner, Richard A. "Intellectual Property: The Law and Economics Approach," *Journal of Economic Perspectives* 19:2 (2005), 57-73.

Shiffrin, Seana. "Lockean Arguments for Private Intellectual Property," in *New Essays in the Legal and Political Theory of Property*, ed. Stephen R. Munzer. Cambridge: CUP, 2001, 138-67.

Solum, Larry. "Efficiency, Pareto, and Kaldor-Hicks" (Legal Theory Lexicon 060), at: http://lsolum.typepad.com/legal_theory_lexicon/2006/10/legal_theory_le_1.html

Sunder, Madhavi. "IP³," *Stanford Law Review* 59 (2006), 257-332.

Tushnet, Rebecca. "Economies of Desire: Fair Use and Marketplace Assumptions," *William and Mary Law Review* 51 (2009), 513-46.

Requirements/Grading:

Mini-debates: 25%

Discussion Leader: 5%

Debate: 20%

Issue Presentation: 20%

Final: 30%

Attendance: (as deduction)

Mini-Debates: These are designed to get you some hands-on practice formulating and defending policy-oriented ("applied") arguments. The debates will be informal. For each debate, each student should produce an argument for each side of the proposition (*i.e.*, one for and one against), and a response to each of these arguments (Example. Topic: "Suicide is wrong." Argument 1: "Suicide makes the victim's relatives unhappy." Answer: "They didn't like the schmo anyway.>"). You will turn these in for your grade. In class, then, we will "crowdsource" the debate: I will divide you into small groups (each group will be on one side or the other), and each group will produce the best case they can, selecting from the arguments available to them. We'll then map out the arguments on the board and discuss them.

Discussion Leader: Everyone gets to present one of the readings to the class. Your job is to be able to lead a discussion of the thesis and major arguments of the piece, and you should have

some discussion questions (around 3 or 4, depending on their complexity) prepared to facilitate class discussion of it. Depending on the size of the class, this will be a group assignment.

Debate: We will have several in-class, semi-formal debates over the term; everybody will get to debate once. In each of these, two teams of two students each will debate a proposition of philosophy central to the moderns (for example, of theodicy: “the existence of evil in the world is compatible with the existence of God”). One team’s job will be to affirm the proposition; the other’s is to negate it. There will be constructive arguments, rebuttals, and cross-examination on both sides. Members of the class will then judge which side “won” (in the sense that their presentation was more compelling – don’t vote for which side you personally think is right!). I will have a separate handout doing into much more detail on this. I will assign people more or less randomly to debate topics and partners; you do not need to advocate the side you personally agree with (in fact, it’s sometimes better if you don’t – if it’s good to read your enemies, it’s even better to try to advocate their position). Your grade derives from how well you debate, not whether you win.

Issue Presentation: Each student will have the opportunity to present an ethical issue in information technology to the class. I don’t want to pick issues for you, but you can/should probably vet issues with me (they don’t have to be IP-related; they should be specific: “violent video games” as opposed to “media;” the mini-debates are designed to provide you some models). For a lot of issues, I can point you to some relatively short readings to help you orient yourself. For your presentation, you should (a) explain what the issue is, (b) what ethical concerns it raises, and (c) analyze it from (i) a utilitarian point of view; (ii) a deontological point of view (this can be Kantian, Lockean, or whatever – just explain what it is); and (iii) from the point of view of a ‘thick’ concept (like privacy, property, free speech, etc.). You are not required to conclude that the issue is or is not ethical – your job is to lay out the issues so everyone can see and understand them. Thus, you might present utilitarian arguments both pro and con. You will be graded on a combination of your thoroughness and clarity; you should aim for 10-15 minutes of speaking time.

Final: This is a written exam (essay and/or short answer) designed to test your comprehension of the material. I will give you questions in advance, and you’ll write answers to some of them during the test period.

Attendance/Participation: You can’t learn very much in philosophy by just sitting there. You learn even less if you’re not there at all. Attendance is expected. You get one free absence. After that, each unexcused absence takes 3 points away from your final course grade. **Note**, also, that if you’re not there when we do in-class assignments, you can’t get credit for them.

Contact Information/Getting Assistance: It is important that you not fall behind. I want to help you avoid doing so. To get help from me:

1. Speak to me before or after class; we can set an appointment to meet at a later time if need be.
2. Email me at ghull@uncc.edu. This is probably the best way to get in touch outside of class.

3. Call my office: 7-2182 and leave a voicemail. This is less effective than email because I'm bad about checking my messages.
4. Summer **office hours** are by appointment. I will generally be able to be there by about 8:30 on the mornings we have class, and can of course stay after.

Disabilities: I share UNCC's commitment to provide reasonable accommodations to enable students with disabilities to access course material. Please address any special needs or special accommodations with me at the beginning of the semester or as soon as you become aware of your needs. You'll also need to contact disability services, 704-687-4355 (230 Fretwell).

Academic Integrity: University academic integrity guidelines can be found at: <http://www.legal.uncc.edu/policies/ps-105.html#VI>. You are required to follow them, and I will follow university procedure in dealing with academic integrity violations.

Course Outline (not a contract)

T	5/25	First class; Brief intro to IP (power point)
	5/26	Ethics, Technology and Politics: <ul style="list-style-type: none"> • Inrona, "Maintaining the Reversibility of Foldings" • <u>Mini-debate</u>: "Congress should pass a law enforcing net-neutrality"
	5/27	Theory: Utility/welfare: <ul style="list-style-type: none"> • Mill, <i>Utilitarianism</i>, ch. 2 • Solum, "Efficiency, Pareto and Kaldor-Hicks"
T	6/1	Welfare: the efficiency argument <ul style="list-style-type: none"> • Posner, "Intellectual Property: the Law and Economics Approach" • <u>Mini-debate</u>: "Fair use should only cover cases of presumed market failure"
	6/2	Critique of Welfare Model: <ul style="list-style-type: none"> • Tushnet, "Economies of Desire" • Hetcher, "Tushnet Review"
	6/3	Debate (1) : "Utilitarianism is not really moral philosophy"
T	6/8	Deontology: theory <ul style="list-style-type: none"> • Locke, <i>Second Treatise</i> • <u>Mini-debate</u>: "Copyright should reward originality, not effort"
	6/9	Deontology: application: <ul style="list-style-type: none"> • Hughes, "Philosophy of Intellectual Property" (just the Locke sections) • Shiffrin, "Lockean Arguments"
	6/10	Debate (2): "Deontological considerations are more important than utility in determining the proper scope of property rights"

T	6/15	<p>Begin <u>Issue Presentations</u></p> <p>Deontology: Policy</p> <ul style="list-style-type: none"> • Benkler, “Through the Looking Glass” • <u>Mini-debate</u>: “DRM is a morally superior policy to lawsuits for copyright enforcement”
	6/16	<p><u>Issue Presentations</u></p> <p>Critical Theory: theory</p> <ul style="list-style-type: none"> • Marx, “Alienated Labor” and “Fetishism of Commodities”
	6/17	<p><u>Issue Presentations</u></p> <p>Critical Theory: application</p> <ul style="list-style-type: none"> • Coombe, “Legal Claims to Culture” • Hardt/Negri, “Life on the Market”
T	6/22	<p><u>Issue Presentations</u></p> <p>Critical Theory: Application</p> <ul style="list-style-type: none"> • Sunder, “IP³”
	6/23	<p><u>Issue Presentations</u></p> <p>Critical Theory and Policy:</p> <ul style="list-style-type: none"> • Katyal, “Semiotic Disobedience” • <u>Mini-debate</u>: “Intellectual Property is a good strategy for preserving culture”
	6/24	<p><u>Issue Presentations</u></p> <p>Debate (3): “Marxist analysis is no longer relevant”</p> <p>Distribute exam questions</p>
T	6/29	Exam: 8:00-10:30