

Race, National Identity and Intellectual Properties

Fall 2016
LAW 274GT

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“Thou shalt not steal” has been an admonition followed since the dawn of civilization. Unfortunately, in the modern world of business this admonition is not always followed. Indeed, the defendants in this action for copyright infringement would have this court believe that stealing is rampant in the music business and, for that reason, their conduct here should be excused. The conduct of the defendants herein, however, violates not only the Seventh Commandment, but also the copyright laws of this country.

~ Judge Kevin Thomas Duffy

Grand Upright Music, Ltd. v. Warner Brothers Records, Inc. (SDNY 1991)

COURSE DESCRIPTION

Intellectual property is increasingly described as a “precious commodity” in today’s globalized world, a good which is central to continued economic growth. Indeed, Mark Getty has gone so far as to call it the “the oil of the twenty-first century.” However, as maximalist copyright, trademark, and patent regimes have taken hold in the United States and globally, so too have concerns about their implications for the rights of minoritarian groups. Issues such as corporate ownership of music, cultural appropriation, and cultural property rights point to the myriad ways in which intellectual property rights regimes disenfranchise particular groups, implicate (neo)colonial practices, and exploitatively repurpose knowledge. Proceeding from the understanding that intellectual properties and the legal regimes through which they are regulated are cultural objects, we will consider how questions of race and national identity are negotiated in the context of copyrights, trademarks, and patents. Examining controversies such as

those around copyright infringement in the hit song *Blurred Lines*, the cancelation of the Washington Redskins mark, and race-based patents will help us to understand and analyze the importance of intellectual properties to the negotiation of identity and property rights. These inquiries will help us: (1) understand how intellectual properties operate as cultural texts, (2) consider the relationship between intellectual properties and the negotiation of race and national identity, and (3) imagine policies which better protect the knowledge and rights of minoritarian groups, both domestically and internationally.

COURSE REQUIREMENTS

Regular attendance and participation are required and may be used to raise/lower grades.

Each student will be graded on (1) three short assignments, as described below in the syllabus and (2) a 25 page research paper on a topic of their choosing related to the subject matter of the course. The former will make up 20% of your final grade and the latter will make up 80% of your final grade.

All texts for the course will be available on SmartSite and/or retrievable through the library.

COURSE SCHEDULE

PART I: INTRODUCTORY MATTERS

WEEK 1 - AUGUST 24TH

WHEN INTELLECTUAL PROPERTIES MEET RACE AND NATIONAL IDENTITY

- Morrison, "Gaye v. Thicke: How Blurred Are the Lines of Copyright Infringement?" *OUPBlog*, March 26, 2015, <http://blog.oup.com/2015/03/blurred-lines-copyright-infringement/>
- Prabhala and Krishnaswamy, "Mr. Modi, Don't Patent Cow Urine," *The New York Times*, June 16, 2016, http://www.nytimes.com/2016/06/17/opinion/mr-modi-dont-patent-cow-urine.html?_r=0
- Geigner, "Navajo Nation's Trademark Suit Against Urban Outfitters Proceeds, But Should It?" *TechDirt*, February 11, 2016, <https://www.techdirt.com/articles/20160203/09111933507/navajo-nations-trademark-suit-against-urban-outfitters-proceeds-should-it.shtml>

SHORT RESPONSE PAPER DUE

What are some of the ways in which intellectual properties intersect with race and national identity? How should we as lawyers attend to these intersections? How should we move beyond lawyerly thought to attend to these intersections? Why is considering the impacts of copyrights, trademarks, and patents on questions of race and national identity important, pressing even?

WEEK 2 - AUGUST 31ST

BEYOND LAW AND ECONOMICS

- Coombe, "Introduction" in *The Cultural Life of Intellectual Properties* (1999): 1 - 28.
- Sunder, "Fair Culture" and "Everyone's a Superhero" in *From Goods to a Good Life* (2012) 82 - 125.

Why and how does Coombe ask us to shift to a critical/cultural legal studies? Why are intellectual properties central to this shift? How can practicing lawyers integrate some of the theoretical innovations that Coombe suggests? How does Sunder reframe copyright in order to move away from a law and economics framework? How should we think about the relationship between law and culture?

WEEK 3 - SEPTEMBER 7TH

CRITICAL RACE THEORY FOUNDATIONS

- Crenshaw, Gotanda, Peller, and Kendall “Forward” and “Introduction” in *Critical Race Theory: The Key Writings that Formed the Movement* (1995): ix - xxxii.
- Tehranian, “Towards a Critical IP Theory: Copyright, Consecration, Control,” *Brigham Young University Law Review* (2012): 1237 - 1249.

What are the core principles of critical race theory? How can we map them onto intellectual properties? How do we define Critical IP Theory? What is its utility to lawyers and scholars?

PART II: CASE STUDIES

WEEK 4 - SEPTEMBER 14TH

RACE-ING WRITING (COPYRIGHT)

- *Suntrust Bank v. Houghton Mifflin*, 268 F.3d 1257 (11th Cir. 2001).
- Jarrett, “Copyright Law, Free Speech and the Transformative Value of African American Literature,” in *Representing the Race: A New Political History of African American Literature* (2011): 127 - 161.

*****PAPER TOPIC JUSTIFICATIONS DUE*****

WEEK 5 - SEPTEMBER 21ST

HISTORIES OF JAZZ, SAMPLING & ANTI-BLACKNESS (COPYRIGHT)

- KJ Greene, “Copyright, Culture & Black Music: A Legacy of Unequal Protection,” *Hastings Communication and Entertainment Law Journal* (1999) 340 - 383.
 - *Grand Upright Music, Ltd. v. Warner Brothers Records, Inc.* (SDNY 1991).
 - Lester, “Blurred Lines – Where Copyright Ends and Cultural Appropriation Begins – The Case of Robin Thicke v. Bridgeport Music, and the Estate of Marvin Gaye,” *Hastings Communications and Entertainment Law Journal* (2014), 217 - 242.
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WEEK 6 - SEPTEMBER 28TH

FASHION, RACIAL NORMS & CULTURAL APPROPRIATION (TRADEMARK)

- Jenni Avins, “The Dos and Don’ts of Cultural Appropriation,” *The Atlantic*, October 20, 2015, <http://www.theatlantic.com/entertainment/archive/2015/10/the-dos-and-donts-of-cultural-appropriation/411292/>
- *Navajo Nation v. Urban Outfitters*, 935 F.Supp.2nd 1147 (Dist. New Mexico 2013).
- Minh-Ha T. Pham, “What’s in a Name?” *The American Prospect*, November 3, 2011, <http://prospect.org/article/whats-name-3>

WEEK 7 - OCTOBER 5TH

UNDOING DISPARAGEMENT (TRADEMARK)

- 15 USC §1052
- *Pro Football, Inc. v. Blackhorse*, 112 F.Supp.3rd 439 (E.D. Virginia, 2015)
- *In re: Tam*, 808 F.3d 1321 (2016), 1330 - 1348, 1354-1358, 1376 - 1382.
- Schur, “Legal Fictions” in *African American Culture and Legal Discourse* (2009): 191 - 198.

WEEK 8 - OCTOBER 12TH

PAPER WORKSHOP

*****PAPER OUTLINE DUE*****

WEEK 9 - OCTOBER 19TH

(RE)RACIALIZING MEDICINE (PATENT)

- Jonathan Kahn, “The Birth of BiDil” and “Race-ing Patents/Patenting Race,” in *Race in a Bottle: The Story of BiDil and Racialized Medicine in a Post-Genomic Age* (2013): 48 - 71, 124 - 157.
- Dorothy Roberts, “Genetic Surveillance,” in *Fatal Invention: How Science, Politics, and Big Business Re-Create Race in the Twentieth Century* (2011), 261 - 286.

WEEK 10 - OCTOBER 26TH

PATENTS AND (NEO)COLONIALITY IN A GLOBAL CONTEXT (PATENT)

- UNESCO (2003) *International Declaration on Human Genetic Data*, October 2003, http://portal.unesco.org/en/ev.php-URL_ID=17720&URL_DO=DO_TOPIC&URL_SECTION=201.html
- Amani and Coombe, “The Human Genome Diversity Project: The Politics of Patents at the Intersection of Race, Religion and Research Ethics,” *Law and Policy* (January 2005).
- Foster, “Patents, Biopolitics, and Feminisms: Locating Patent Struggles Over Breast Cancer Genes and the Hoodia Plant,” *International Journal of Cultural Property* (2012): 372 - 381, 387 - 392.

WEEK 11 - NOVEMBER 2ND

RETHINKING CULTURAL PROPERTY AND PIRACY (CULTURAL PROPERTY)

- Anderson and Christen, “Traditional Knowledge Licenses and Labels,” *Arts Law Centre of Australia*, 2012, <http://www.artslaw.com.au/art-law/entry/traditional-knowledge-licences-and-labels/>
- Anderson and Bowrey, “The Imaginary Politics of Access to Knowledge: Whose Cultural Agendas Are Being Advanced?” *Australasian Intellectual Property Law Resources*, 2006, <http://www.austlii.edu.au/au/other/AIPLRes/2006/13.html>

WEEK 12 - NOVEMBER 9TH

THE YOGA WARS (CULTURAL PROPERTY)

- Anjali Vats, “(Dis)owning Bikram: Decolonizing Vernacular and Dewesternizing Restructuring in the Yoga Wars,” *Communication and Critical/Cultural Studies* (2015)
 - *Bikram Yoga v. Evolution Yoga*, 803 F.3d 1032 (2015).
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WEEK 13 - NOVEMBER 16TH

POSTRACIAL INTELLECTUAL PROPERTY

- Coates, “There Is No Postracial America,” *The Atlantic*, July/August 2015, <http://www.theatlantic.com/magazine/archive/2015/07/post-racial-society-distant-dream/395255/>
 - Vats, *Creative Differences: Race, National Identity & Intellectual Properties in Postracial America* (Chapter in Progress TBD)
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WEEK 14 - NOVEMBER 23RD

PAPER PRESENTATIONS

WEEK 15 - NOVEMBER 30TH

PAPER PRESENTATIONS

*****FINAL PAPERS DUE DECEMBER 10TH*****