

INTELLECTUAL PROPERTY CURRICULA IN THE UNITED STATES

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I. INTRODUCTION

In 1999, Professor Roberta Kwall of DePaul University Law School published rather interesting statistics regarding intellectual property (“IP”) course offerings at American law schools.¹ Apparently, much has changed in the six short years since she conducted her survey. In 1999, Kwall reported that there were 56 law schools offering a course titled Patent Law¹ and 54 law schools offering a course titled Copyright Law.² Today, there are 139 law schools offering Patent Law and 123 law schools offering Copyright Law. All but seven law schools in America offer at least one course in IP. Fifty-two schools offer 1 to 4 classes, 89 schools offer 5 to 10 classes, and 20 schools offer more than 10 courses.³

Clearly, American legal academia has “discovered” IP. It seems inappropriate any longer to refer to it as a “hot new area.”

II. METHODOLOGY

To date, except for Kwall’s survey, there has been no nationwide, systematic study of the status of IP course offerings. As such, I intended to determine the state of IP law curricula in the United States today.⁴ However, I felt constrained by two facts. First, if one merely relies on promotional literature

¹ Roberta Rosenthal Kwall, *The Intellectual Property Curriculum: Findings of Professor and Practitioner Surveys*, 49 J. Legal Educ. 203, 203 (1999).

¹ *Id.* at 210.

² *Id.* at 206.

³ See app. A.

⁴ Kwall conducted a nationwide survey of law professors. She received responses from 69 schools (sometimes from more than one professor at a school). See *supra* n. 1, at 203-04.

from law schools, there is a great risk that the numbers of classes reported would not be entirely accurate. Second, if you ask professors, as Kwall did,⁵ you run the risk that professors either do not know or unintentionally misrepresent (either high or low) the number of classes offered at their school.

Every law school now has a web site. Every law school now lists the courses it offers on its web site. To be sure, some are more up to date than others. My methodology was simply to count the number of IP courses each school offered. My research assistant⁶ visited very web site of every American law school and counted the IP courses offered for the 2004-2005 academic year. We did not take the word of promotional literature and we did not ask the schools any questions in compiling our data. Using the law school web sites, we merely counted how many courses each law school listed as being available to students and others. Our web site review included both accredited and unaccredited schools.

Though our results are only as accurate as the law schools' web sites, this methodology is exhaustive,⁷ and is intended to portray an accurate and objective picture of IP in American law schools today.⁸

I arrived at a list of what I arbitrarily refer to as "Core IP" courses. We then counted how many of these Core IP courses are offered at each law school. These Core IP courses included the following:

1. Intellectual Property Survey
2. Advanced Intellectual Property (General)
3. Intellectual Property Litigation (General)

⁵ See *supra* n. 1, at 203-04.

⁶ Thanks to Jaclyn Sprtel.

⁷ Or intends to be. Some law schools seem to hide their curriculum. We did our best to pull out the intellectual property offerings at each school. If the law school did too good of a job in hiding their intellectual property law offerings, our methodology would not represent that school's numbers accurately. We did our best, but we were also struck at the wide range of quality and accessibility of web sites.

⁸ This is not to necessarily represent our collection of data is perfect. Not only are web sites sometimes not maintained with the most up to date information. Some schools list LLM courses intermingled with JD courses with no clear indication of how many JD students can actually take advantage of them. Furthermore, our methodology does not always take into account how often courses are actually offered. Some schools list classes that may never have actually been offered or classes which are often offered "intermittently." However, when accessible (and most sites make this publicly available), we counted the number of classes listed and actually offered to students for the 2004-05 academic year. Because I am not passing judgment on any schools' policies, we merely counted every course each school claimed to offer.

4. Introduction to Patent Law
5. Patent Law
6. Copyright Law
7. Advanced Copyright Law
8. Trademark Law
9. International and Comparative Intellectual Property Law
10. Intellectual Property Licensing
11. Patent Prosecution
12. Patent Litigation
13. Trademark Prosecution
14. Trademark Litigation
15. Trade Secrets
16. Entertainment Law
17. Intellectual Property Transactions
18. Internet/E-Commerce Law

One difficulty that I realized rather soon in this study was that many schools use different appellations for various classes. Therefore, I arbitrarily created this list of Core IP courses. The defense of this list is only that it represents what I consider to be the Core IP classes any law school might offer. I honestly attempted to fit other law schools' course titles into these course titles. When necessary and available, I referred to course descriptions to determine how to best title specific IP courses. This was not particularly difficult, as the range of titles of the same course is, in the end, rather narrow.

I did not give credit to other "quasi" IP law courses such as art law or sports law. Many schools offer such courses. This in no way is intended to pass judgment on these quasi IP classes. They simply did not fit into what I referred to as Core IP courses. As such, they were not counted.

Additionally, contrary to the situation with Core IP courses, there is simply too much variation in the course descriptions in the quasi IP courses to determine if, or to what extent, they are IP courses in the first place. Art law, for example, at some schools appears to contain a substantial amount of copyright law, while at other schools, art law focuses on the role of museum curators, contracting, or even art restoration and recovery. Therefore, I felt it would be more honest and consistent if I merely omitted these courses from consideration.

Twenty-two schools still teach courses which combine two of the Core IP courses into one.⁹ Luckily all of these classes were a combination of two

⁹ See app. A

Core IP classes. Therefore, schools were given half credit for each of the subject matter areas covered.

There was no way I could determine the frequency any given course is offered with this methodology. That is, these courses merely appear “on the books” at law schools. I do not know if or how frequently any of these courses are actually offered to students.¹⁰

For emphasis, I restate the major caveat of this brief essay: our results only reflect what law schools list on their web pages. To the extent these web sites are not accurate, our results may change.¹¹ However, given that each law school seems to have an important incentive to maintain their school curriculum-related web pages, I consider this to be a rather accurate picture of reality.

III. RESULTS

The results are really quite stunning. According to *U.S. News and World Report*, the top 10 IP schools in the country are as follows:¹²

1. University of California-Berkeley (8)
2. Stanford University (10)
3. George Washington University (10)
4. University of Houston (11)
5. Cardozo-Yeshiva University (11)
6. Franklin Pierce Law Center (14)
7. Columbia University (6)
8. Duke University (8)
9. New York University (9)
10. Boston University (9)

According to my methodology, the top 9 schools¹³ are as follows:¹⁴

1. John Marshall Law School (20)
2. Santa Clara University (19)
3. Whittier College (18)

¹⁰ See *supra* n. 8.

¹¹ Additionally, these numbers only reflect what numbers one normally skilled in the art and with reasonable diligence might find when looking at schools' web sites. As I stated earlier, some schools made this inquiry a bit challenging.

¹² *U.S. News & World Report: America's Best Graduate Schools* 69 (2006 ed). Numbers in parenthesis indicate the number of courses each school offers.

¹³ Five schools were tied for the tenth place. For simplicity, I went with 9.

¹⁴ See app. A.

4. William Mitchell College of Law (16)
5. Suffolk University (15)
6. University of Akron (15)
7. Franklin Pierce Law Center (14)
8. Loyola Marymount University (Los Angeles) (13)
9. Georgetown University (13)

Only Franklin Pierce appears on both lists.

It is difficult to tell precisely what these numbers mean. To be sure, the schools on my list offer more Core IP courses than those on US News's list. On the other hand, this discrepancy in course offerings is not huge. A cynical view is that the respondents to US News's survey are picking school prestige as an indicator of a quality IP program.¹⁵ However, thinking in terms of number of courses offered, the schools on the US News list are not irrational. Even on US News's top 10 list, each school offers at least six courses and most of the schools offer substantially more than that. That is, there seems to be a more positive correlation between the number of courses offered and the ranking on US News's survey than a cynic might believe.

Today, 52 schools offer between 1 and 4 classes, 89 schools offer between 5 and 10 classes, and 20 schools offer more than 10 courses.¹⁶

Many facts deserve specific comment. Forty-three schools offer a course in IP Licensing.¹⁷ In a different context, I have claimed that IP Licensing is becoming an extremely important area of IP.¹⁸ Apparently law schools in the United States have realized this fact.

However, only 16 schools offer a course in more general IP transactions,¹⁹ this is somewhat surprising. As IP law becomes more transaction oriented, I suspect this number will change rather drastically in the years to come.

¹⁵ I do not intend for this article to digress into a critique on the infamous *U.S. News* rankings; however, just for informational purposes, it is important to point out *U.S. News*'s methodology in ranking specialty programs such as IP. It is not clear how they are selected, but each year, a specific number of IP professors receive a list of all law schools. They are asked to choose 20 schools from that list that have excellent IP programs. They are not asked to rank them and are given almost no direction in how to choose them. They are only asked to choose. U.S. News then tallies these results. The school chosen most frequently is named the "top" IP program, the second highest vote getter is second and so on.

¹⁶ See app. A.

¹⁷ See app. N.

¹⁸ See generally Kenneth L. Port, et al., *Intellectual Property Licensing in the Information Age* (2d. ed. 2005).

¹⁹ See app. O.

The most common course to have in a law school's curriculum is the IP Law Survey.²⁰ One hundred and forty-four schools list the IP Survey as one of the classes they offer. If the average enrollment of every IP Survey course is approximately 40, nearly 6,000 students per year take the course. With roughly 40,000 law students graduating each year, this figure that means about 15% of all law students take, at least, an IP law survey course.²¹

The next most popular Core IP course to have in a law school curriculum was Patent Law with 139 schools²² offering such a class. Additionally, 11 schools offer an Introduction to Patent Law one semester followed by a Patent Law class a subsequent semester.²³ Therefore, there are actually 150 patent law courses offered at 139 schools. There are 123 schools that offer Copyright Law.²⁴ It is rather interesting that so many more schools offer a course in patent law than in copyright law. Although the numbers are rather close (139 for Patent Law and 123 for Copyright Law), I, at least, would have expected Copyright Law to be far more popular than Patent Law. Copyright Law is perceived to be easier to teach and can be taught and practiced by anyone. Although I think this perception is misguided, there is also the belief that you have to be a patent lawyer to teach Patent Law. These considerations would have led me to believe that Copyright Law would have been a far more popular course than Patent Law.

The same number of schools offer a course in Internet Law (whatever that might be) as Trademark Law; both courses are offered at 106 schools. It is not surprising that Entertainment Law would be a rather popular class. There are 101 schools that offer a course on Entertainment Law.²⁵

It is somewhat surprising that 71 schools offer a course on international or comparative IP.²⁶ However, the top 9 schools identified above in my list ac-

²⁰ See app. C.

²¹ Presuming, of course, that all 6,000 of the students were third-year students and assuming, of course, that my number of 40 per class is accurate.

²² See app. D. In 1999, Kwall found 56 schools offered a course in Patent Law. See *supra* n. 1, at 210.

²³ See app. P.

²⁴ See app. E. In 1999, Kwall found 54 schools offered a course in Copyright Law. See *supra* n. 1, at 206.

²⁵ See app. H.

²⁶ See app. I. Some schools offer more than one course in international IP. Some schools break it down into the obvious International Patent Law, International Copyright Law, and International Trademark Law, or combinations thereof.

count for 23 international IP courses (an average of nearly 3 each). One school, Whittier College, offers five.²⁷

After these seven courses (IP Survey, Patent Law, Copyright Law, Internet Law, Trademark Law, Entertainment Law and International IP), the numbers drop off rather precipitously. Therefore, it is safe to conclude that these seven courses make up the essence of IP curricular offerings in American law schools today.²⁸

IV. CONCLUSIONS

Apparently, much has changed since Kwall's survey in 1999. Today, 52 schools offer between 1 and 4 classes, 89 schools offer between 5 and 10 classes, and 20 schools offer more than 10 courses. In 1999 Kwall reported that there were 56 Patent Law courses²⁹ and 54 Copyright Law courses being offered.³⁰ Today, there are 139 Patent Law courses and 123 Copyright Law courses. In six years, the number of schools offering Patent Law has increased nearly two and one half times and those that offer Copyright Law has more than doubled. Therefore, IP courses have become an important aspect of most law schools' curricula. It is no longer appropriate to refer to IP as a "hot new subject." "Hot" maybe, but not "new."

To view the appendices to this article, please visit the IDEA web site at:
<http://www.idea.piercelaw.edu/Articles/46/appendices/>

²⁷ *See id.*

²⁸ I was unable to locate a law school which offers intellectual property law in the first-year curriculum.

²⁹ *Supra* n. 1, at 210.

³⁰ *Supra* n. 1, at 206.