

# BCLT ANNUAL BULLETIN

UC BERKELEY SCHOOL OF LAW

BERKELEY CENTER FOR LAW & TECHNOLOGY

## BCLT DEVELOPMENTS & EVENTS

### Past Events - 2007

Co-sponsored by BCLT, DePaul, Cardozo, and Stanford Law Schools on August 9 - 10, the IP Scholars Conference brought together 115 intellectual property scholars from over 70 institutions.

Leading technology attorneys from BCLT's sponsoring firms began their Annual Lunchtime Lecture Series in mid-September, continuing through May 2008.

BCLT and the UC Berkeley CRC held the Second Annual Berkeley-China Innovation & IPR Leadership Program at UC Berkeley, September 10 - 14.

On September 11 BCLT hosted Margaret Peterlin, Deputy Under Secretary of Commerce for IP and Deputy Director of the U.S. PTO, for a roundtable discussing the Global Marketplace and the American IP System.

At BCLT's Fall Job Expo more than 20 law firms came to Boalt Hall to talk about their practices in technology and intellectual property law.

BCLT gathered a group of scholars and practitioners on September 28 for a roundtable discussion of possible reforms for the Court of Appeals for the Federal Circuit.

On October 3 - 4 privacy advocates met for an Online Advertising & Privacy workshop, where they discussed strategies to address the privacy implications of online advertising and other pressing concerns.

The Economics of Competition and Innovation conference on October 26 - 27 (co-sponsored with the Center for Competition Policy), explored the analysis of law and economics policies related to IP and research and development.

The November 28 - 30 Advanced Patent Law Institute provided new analysis, tools, and practice strategies in the wake of recent major decisions. The event was presented by BCLT, the University of Texas School of Law, and the Stanford Program in Law, Science & Technology.

Professor Zorina Khan, Associate Professor of Economics at Bowdoin College, is a Visiting Fellow at BCLT for the 2007 - 2008 Academic year.

### Upcoming Events - 2008

On January 29 more than 30 law firms will come to Berkeley Law and talk about their practices in technology and IP law, as well as offer mentoring opportunities to 11's at BCLT's Spring Job Fair.

The Fifth Annual Telecommunications and IP Conference is co-sponsored with Seoul National University and will be held in Maui, Hawaii on February 15 - 16.

The March 7 - 8 IP & Entrepreneurship Symposium will explore the role of intellectual property, and in particular patent law, on entrepreneurs and entrepreneurship. The Symposium will also introduce BCLT's project on IP and entrepreneurship, launched last year with the generous support of the Ewing Marion Kauffman Foundation.

BCLT is proud to announce its first Privacy Lecture to be held April 14. David Cole, Professor of Law at Georgetown University Law Center, will speak on the intersection between privacy and national security law. Responses will be made by David S. Kris and Professor John Yoo.

At BCLT's Law and Business of Internet Advertising Conference on April 18, academic experts and practicing attorneys will discuss the legal and business issues related to Internet advertising. Co-hosted with the Santa Clara University School of Law.

The Institute for Global Challenges and Law at Boalt Hall and BCLT will hold a roundtable about International Outsourcing of the Legal Profession on April 25.

On June 12 - 13 BCLT will co-sponsor a Privacy Law Scholars conference to be held at the George Washington University Law School.

BCLT and the Federal Judicial Center (FJC) are offering the Tenth Intellectual Property in the New Digital Age Program for Court Judges in May 2008.

Miriam Bitton, BCLT's Microsoft Fellow from 2006 - 2007, is currently a Visiting Faculty member at DePaul Univ. College of Law and will become an Associate Professor at Bar Ilan University, Israel in Fall 2008.

## NEW LAW & TECH FACULTY MEMBER: AMY KAPCZYNSKI



BCLT is proud to welcome Assistant Professor of Law, Amy Kapczynski to the UC Berkeley Law School. Professor Kapczynski received her J.D. from the Yale Law School in 2003 and was awarded post-doctoral fellowships at the Yale Law School and the Yale School of Public Health. Prior to that, she spent several years in the United Kingdom as a Marshall Scholar, receiving an M.A. in Literature from Queen Mary and Westfield College, University of London in 1998, and an M.Phil. in the Sociology and Politics of Modern Society from Cambridge University in 1997. She received her A.B. *summa cum laude* in Politics and Women's Studies from Princeton University in 1996. After law school, Professor Kapczynski clerked for Judge Guido Calabresi on the United States Court of Appeals for the Second Circuit and Justices O'Connor and Breyer on the United States Supreme Court.

Professor Kapczynski's current research interests occupy the intersections between international law, intellectual property, and global health. These interests began while she was a student at Yale. In 2001, Kapczynski helped lead efforts that resulted in Yale University and Bristol-Myers Squibb permitting generic competition and providing steep price discounts for an important anti-HIV drug (d4T) in South Africa. Drawing on this experience, Kapczynski co-founded Universities Allied for Essential Medicines with other students in 2002.

Professor Kapczynski will be publishing an article in the Yale Law Journal in 2008 entitled "The Access to Knowledge Mobilization and the New Politics of Intellectual Property." This article combines two fields that are rarely discussed together: intellectual property scholarship and law and social movements scholarship. The article traces the development of a new mobilization for "access to knowledge" drawing upon the sociological theory of frame mobilization. Framing theory investigates how social actors intervene in the field of ideas to theorize their interests, build alliances, mobilize support, and discredit their opponents. The article elucidates how framing theory helps account for the rapidly evolving political economy of the intellectual property field and discusses the interrelationship between law and framing processes, using the example of the evolving access to knowledge mobilization. Professor Kapczynski's future research agenda includes work on the new Indian Patent Act, which has introduced product patents on pharmaceuticals to the country for the first time in more than 30 years.



## Robert Barr

### BCLT EXECUTIVE DIRECTOR

Robert Barr has been the Executive Director of BCLT and lecturer-in-residence at Boalt Hall since 2005. Prior to joining BCLT, he was the first Vice President of Intellectual Property for Cisco Systems in San Jose, California, where he was responsible for all of the company's

patent prosecution, licensing, and litigation. He started Cisco's patent program in 1994 and built a portfolio of over 2000 issued patents and over 3000 pending patents.

Robert has degrees in Electrical Engineering and Political Science from MIT and a JD *cum laude* from Boston University School of Law. He was an Adjunct Professor of Patent Law at Hastings College of Law from 1994-1999.

Robert has been a prominent patent attorney in Silicon Valley for over 20 years. He started his patent practice at the law firm of Townsend and Townsend. He has also been a partner at Brobeck, Phleger and Harrison and Weil, Gotshal and Manges, where he specialized in patent strategy counseling for clients in the computer, telecommunications, and semiconductor industries.

He is currently of Counsel to the law firm of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.

Robert is a frequent speaker on patent law issues and patent reform. He testified twice at the Federal Trade Commission hearings on Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy.

The Daily Journal named him one of the top 25 intellectual property attorneys in California (2003) and one of the top 10 in-house intellectual property lawyers in California (2004)



## Peter S. Menell

### IP, SOFTWARE PROTECTION, ENTERTAINMENT, PROPERTY LAW

Professor Menell co-founded the Berkeley Center for Law & Technology in 1995. He has written extensively on intellectual property, property, and environmental law. He founded and supervises the Annual Review of Law and Technology, now

entering its ninth year. Professor Menell has organized and lectured at more than two dozen intellectual property education programs for the Federal Judicial Center.

*Legal Realism in Action: Indirect Copyright Liability's Continuing Tort Framework and Sony's De Facto Demise.* 55 UCLA L. Rev. 1 (with D. Nimmer) (2007)

*Unwinding Sony.* 95 Cal L. Rev. 941 (with D. Nimmer) (2007)

*Bankruptcy Treatment of Intellectual Property Assets.* Berkeley Technology Law Journal (2007)

*The Property Rights Movement's Embrace of Intellectual Property: True Love or Doomed Relationship?* 34 Ecology Law Quarterly (2007)

*Economic Aspects of Intellectual Property*, in Encyclopedia of Law and Society: American and Global Perspectives. Sage Publications (2006)

*Intellectual Property in the New Technological Age.* Aspen Law

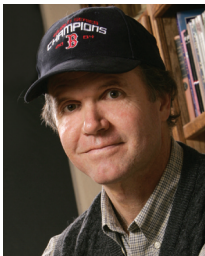
& Business, 4<sup>th</sup> ed. with Statutory Supplement (with R. Merges and M. Lemley) (2007)

*Bankruptcy Treatment of Intellectual Property Assets: An Economic Analysis.* 22 Berkeley Technology Law Journal 733 (2007)

Intellectual Property, chapter in Handbook of Law and Economics. Edited by A.M. Polinsky and S. Shavell (with S. Scotchmer) (2007)

*Software and Internet Law.* Aspen Law & Business, 3<sup>rd</sup> ed. (with R. Merges, P. Samuelson and M. Lemley) (2006)

*Copyright's "Staple Article of Commerce Doctrine": Patently Misguided.* 53 Journal of the Copyright Society 365 (with D. Nimmer) (2006)



## Robert P. Merges

### PATENT, BIOTECHNOLOGY, COMPUTER LAW

Professor Merges is the author of the leading text on patent law and has written numerous articles on the economics of intellectual property, especially as they affect patent law and the biotechnology industries. Professor Merges has worked with

government agencies such as the Department of Justice and the Federal Trade Commission on IP-related policy issues and litigation strategy. He has also consulted with leading law firms and companies.

*Software and Patent Scope: A Report from the Middle Innings.* Texas Law Review Vol. 85:1627 (2007)

*"Now and Then, Here and There: A Review Essay on Khan, The Democratization of Invention, and Blind, et al., Software Patents."* Journal of Economic Literature (2007)

*Intellectual Property in the New Technological Age.* Aspen Law & Business, 4<sup>th</sup> ed. with Statutory Supplement (with P. Menell and M. Lemley) (2006)

*Software and Internet Law.* Aspen Law & Business, 3<sup>rd</sup> ed. (with P. Menell, P. Samuelson and M. Lemley) (2006)

*The Standard of Creativity and the Graham Cases*, in Intellectual Property Stories. R. Dreyfuss and J. Ginsburg, eds. Foundation Press (with J. Duffy) (2006)

*A Response to the Commentators*, response to specially commissioned comments on Arora & Merges. 13 Ind. & Corp. Change 451-475 (2004) by five economists. 15 Ind. & Corp. Change (2006)

*A Transactional View of Property Rights.* 20 Berkeley Tech. L.J. 1477 (2005)

*A New Dynamism in the Public Domain.* 71 Chi. L. Rev. 183-203 (2004)

*Specialized Supply Firms, Property Rights, and Firm Boundaries.* 13 Ind. & Corp. Change 451-475 (with A. Arora) (2004)



## Deirdre K. Mulligan

### PRIVACY, IP, CYBERLAW

Deirdre K. Mulligan is the director of the Samuelson Law, Technology & Public Policy Clinic and a clinical professor of law. Before coming to Berkeley Law, she was staff counsel at the Center for Democracy & Technology in Washington.

Through the clinic, Professor Mulligan and her students foster the public's interest by engaging in client advocacy and interdisciplinary research, and by participating in the development of technical standards and protocols.

*Embedded RFID and Everyday Things: A Case Study of the Security and Privacy Risks of the U.S. e-Passport.* In Proceedings of IEEE International Conference on RFID (with M. Meingast, J. King, and D. Mulligan) (2007)

*Noticing Notice: A large-scale experiment on the timing of software license agreements.* CHI Proceedings (with N. Good, J. Grossklags and J. Konstan) (2007)

*Taking the "long view" on the Fourth Amendment: Stored Records and the Sanctity of the Home.* Stanford Law and Technology Review Symposium (with J. Lerner) (2007)

*ACCURATE Public Comment on the Manual for Voting System Testing & Certification Program.* Submitted to the United States Election Assistance Commission (2006)

*Network Security Architecture for Demand Response/Sensor Networks.* For the California Energy Commission, Public Interest Energy Research Group (with P.S. Subrahmanyam, D. Wagner, E. Jones, U. Shankar and J. Lerner) (2006)

*User choices and regret: Understanding users' decision process about consensually acquired spyware.* I/S, Vol. 1, Issue 1 (with N. Good, J. Grossklags, D. Thaw, A. Perzanowski and J. Konstan) (2006)

*Storing Our Lives Online: Expanded Email Storage Raises Complex Policy Issues.* I/S, Vol. 1, Issue 2 (with A. Schwartz and I. Mondal) (2005)



## Pamela Samuelson

### CYBERLAW, COMPUTER LAW, COPYRIGHT LAW, PRIVACY

Professor Samuelson continues to be active in writing and speaking about how the law should be adapted to respond appropriately to the challenges of advances in digital technology. She serves as an Advisor to the Samuelson Technology Law

and Public Policy Clinic and sits on the Board of Directors for the Electronic Frontier Foundation.

*Should Copyright Owners Have to Give Notice About Their Use of Technical Protection Measures?* 6 J. Telecom. & High Tech. L. 41 (with J. Schultz) (2007)

*A Reverse Notice and Takedown Regime to Enable Fair Uses of Technically Protected Copyrighted Works.* 22 Berkeley Tech. L.J. 981 (with J. Reichman and G. Dinwoodie) (2007)

*Preliminary Thoughts on Copyright Reform Project.* 3 Utah L. Rev. 551 (2007)

*Why Copyright Excludes Systems and Processes From the Scope of Its Protection.* 85 Tex. L. Rev. 1921 (2007)

*Principles for Resolving Conflicts Between Trade Secrets and the First Amendment.* 58 Hastings L. J. 777 (2007)

*Regulating Digital Rights Management Technologies: Should*

*Copyright Owners Have to Give Notice About DRM Restrictions?* Journal of Telecom & Tech. L. (2007)

*Legally Speaking: Software Patents and the Metaphysics of 271(f).* 50 Communications of the ACM 15 (June 2007)

*Why Copyright Law Excludes Systems and Processes From the Scope of Its Protection.* 85 Texas Law Review (2007)

*Patent Reform Through the Courts.* 50 Communications of the ACM (March 2007)

*Software and Internet Law.* Aspen Law & Business, 3<sup>rd</sup> ed. (with P. Menell, R. Merges and M. Lemley) (2006)

*Enriching Discourse on Public Domain.* 55 Duke L. J. 783 (2006)



## Paul Schwartz

### PRIVACY, COPYRIGHT, TELECOMMUNICATIONS, INFORMATION LAW

Professor Schwartz is a leading international expert on information privacy and information law. His scholarship focuses on how the law has sought to regulate and otherwise shape information technology—as well as the impact of information

technology on law and democracy. Schwartz joined the faculty in 2006 after teaching at Brooklyn Law School, the University of Arkansas-Fayetteville, and visiting several law schools (including Boston College Law School).

*Reviving Telecommunications Surveillance Law.* 75 University of Chicago Law Review (forthcoming 2008)

*Information Privacy Law.* Aspen Press, 2<sup>nd</sup> edition (with D. Solove and M. Rotenberg) (2006)

*Privacy, Information, and Technology.* Aspen Press, 2<sup>nd</sup> edition (with D. Solove and M. Rotenberg) (2006)

*Notification of Data Security Breaches.* 105 Michigan Law Review 913 (with E. Janger) (2007)

*Book Review - Beyond the "War" on Terrorism: Towards the New Intelligence Network.* 103 Michigan Law Review 1446 (with R. Lee) (2005)

*Privacy Inalienability and the Regulation of Spyware.* 20 Berkeley Technology Law Journal 1269 (2005)

*Property, Privacy, and Personal Data.* 117 Harvard Law Review 2055 (2004)

*Evaluating Telecommunications Surveillance in Germany: The Lessons of the Max Planck Institute's Study.* 72 George Washington Law Review 1244 (2004)

*Book Review - The New Privacy.* 101 Michigan Law Review 2163 (with W. Treanor) (2003)

*Eldred and Lochner: Copyright Term Extension and Intellectual Property as Constitutional Property.* 112 Yale Law Journal 2331 (with W. Treanor) (2003)



## Howard Shelanski '92

### TELECOMMUNICATIONS, ANTITRUST LAW

Professor Shelanski's research focuses on telecommunications law, regulation and antitrust. During the 1999-2000 academic year, he was on leave to serve as Chief Economist of the Federal Communications Commission. During the 1998 - 99 academic year, he served as a senior economist to the President's Council of Economic Advisers.

*Merger Analysis and the Treatment of Uncertainty: Should we Expect Better?* Antitrust L.J. (with M. Katz) (2007)

*Adjusting Regulation to Competition: Toward a New Model for U.S. Telecommunications Policy.* Yale J. Reg. (2006)

*Mergers and Innovation.* Antitrust L.J. (with M. Katz) (2006)

*Telecommunications Law and Policy.* Carolina Academic Press (with S. Benjamin, D. Lichtman and P. Weiser) (2nd Edition, 2006)

*Antitrust Law as Mass-Media Regulation: Can Merger Standards Protect the Public Interest?* 94 Cal. L. Rev. 371 (2006)

*Schumpeterian Competition and Antitrust Policy in High-Tech Markets.* 14 Competition 47 (with M. Katz) (2005).

*Inter-Modal Competition and Telecommunications Policy in the United States.* 60:4 Communications & Strategies 1 (2005)

*Antitrust, Patent, and Copyright: EU and US Perspectives.* Edward Elgar, ed. (Co-edited with F. Levêque) (2005)

*Transaction-Level Determinants of Transfer Pricing Policy: Evidence from the High Technology Sector.* Indust. And Corp. Change (2004)

*Merger Policy and Innovation: Must Enforcement Change to Account for Technological Change?* NBER Working Paper (with M. Katz) (2004)



## Molly Van Houweling

### IP, TECHNOLOGY LAW, PROPERTY, CONSTITUTIONAL LAW

Assistant Professor Van Houweling joined the Berkeley Law faculty in fall 2005 from the University of Michigan Law School, where she had been an assistant professor since 2002. She was a visiting professor at Berkeley Law in 2004-05. Before joining the

Michigan faculty, Professor Van Houweling was president of Creative Commons, a nonprofit group that facilitates sharing of intellectual property. She clerked for Judge Michael Boudin of the Court of Appeals for the First Circuit and for Justice David Souter of the U.S. Supreme Court.

*The New Servitudes.* Georgetown Law Journal (forthcoming 2008)

*Cultural Environmentalism and the Constructed Commons.* 70 Law and Contemporary Problems 23 (forthcoming 2008)

*Bumping Around in Culture: Creativity, Spontaneity and Physicality in Copyright Policy.* 40 U.C. DAVIS. L.REV. 1253 (2007).

*Communications' Copyright Policy.* 4 Journal on Telecommunications & High Technology Law 97 (2005)

*Distributive Values in Copyright.* 83 Texas Law Review 1535 (2005)

*Enforcement of Foreign Judgments, the First Amendment, and Internet Speech: Notes for the Next Yahoo! v. LICRA.* 24 Michigan Journal of International Law 697 (2003)

#### Presentations:

*The New Servitudes.* Presentation to the UCLA Law School Faculty Workshop, February 9, 2007.

*Safe Harbors in Copyright.* Presentation to the Intellectual Property Scholars Conference, August 10, 2006.

*Real Property, Intellectual Property, and the Constructed Commons.* Presentation to the Stanford Law School Conference on Cultural Environmentalism at 10, March 12, 2006.

## SPONSORING FIRMS

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## BCLT FELLOWS

- › Miriam Bitton (Bar Ilan University, Israel; BCLT Microsoft Fellow)
- › Aaron Burstein '04 (BCLT & Samuelson Clinic Fellow)
- › Stuart Graham (BCLT Kauffman Fellow)
- › Chris Hoofnagle (BCLT & Samuelson Clinic Fellow)
- › Maryanne McCormick (BCLT & Samuelson Clinic Fellow)
- › Sean O'Connor (UW School of Law; past Kauffman fellow)
- › Aaron Perzanowski '06 (BCLT Microsoft Fellow)
- › Tara Wheatland '06 (BCLT Copyright Fellow)

## AFFILIATED SCHOLARS

- › Aaron Edlin (Berkeley Law, Economics Department)
- › Joseph Farrell (Economics Department)
- › Richard J. Gilbert (Haas Business School, Economics Department)
- › Bronwyn H. Hall (Economics Department)
- › Thomas Jorde (Berkeley Law)
- › Michael L. Katz (Business School, Economics Department)
- › David Mowery (Haas Business School)
- › David Nimmer (UCLA)
- › Daniel Rubinfeld (Berkeley Law)
- › AnnaLee Saxenian (iSchool, City and Regional Planning)
- › Jason Schultz '00 (Samuelson Law, Technology & Public Policy Clinic)
- › Suzanne Scotchmer (Economics, Public Policy Departments)
- › Marjorie Shultz '76 (Berkeley Law)
- › Carl Shapiro (Haas Business School, Economics Department)
- › Lon Sobel (Southwestern University)
- › David Teece (Haas Business School)
- › Hal R. Varian (iSchool, Haas Business School, Economics Dept.)
- › David Winickoff (Division of Society & Environment)

## AFFILIATED PROGRAMS

- › A Center for Correct, Usable, Reliable, Auditable, and Transparent Elections (ACCURATE)
- › Berkeley Roundtable on the International Economy (BRIE), UC Berkeley
- › Berkeley Technology Law Journal (BTLJ)
- › Center for Information Technology Research in the Interests of Society (CITRIS), UC Berkeley
- › Center for Intellectual Property Studies, Gothenburg & Chalmers University of Technology, Sweden
- › Competition Policy Center (CPC), Haas School of Business, UC Berkeley
- › Haifa Center of Law & Technology (HCLT), Israel
- › Institute for Information Law (IVI), University of Amsterdam
- › Institute of Management, Innovation & Organization, Haas School of Business, UC Berkeley
- › Lester Center for Entrepreneurship & Innovation, Haas School of Business, UC Berkeley
- › Management of Technology Program, Haas School of Business, UC Berkeley
- › Samuelson Law, Technology, & Public Policy Clinic, UC Berkeley
- › School of Information Management and Systems (iSchool), UC Berkeley
- › Seoul National University Center for Law & Technology (SNU CLT)
- › Swiss Federal Institute of Technology - Eidgenössische Technische Hochschule Zürich (ETH)
- › Team for Research in Ubiquitous Secure Technology (TRUST)