

BCLT ANNUAL BULLETIN

BOALT HALL SCHOOL OF LAW

UNIVERSITY OF CALIFORNIA, BERKELEY

BCLT DEVELOPMENTS & EVENTS FOR 2006 - 2007

- Samuelson Law Technology & Public Policy Clinic and BCLT hosted a conference, Reviving the 4th Amendment in June, 2006.
- In February, 2006 and July, 2006 BCLT hosted the US Patent & Trademark Office regarding the US PTO's Proposed Changes to Patent Claims & Continuations. BCLT anticipates more discussions with the US Patent & Trademark Office to further these discussions.
- BCLT faculty continued to provide advanced legal training to 35 Israeli lawyers enrolled in Tel Aviv University's International Executive LL.M. program, including hosting an evening event in August, 2006.
- August 10-11, 2006 the IP Scholar's Conference sponsored by BCLT, DePaul, Cardozo and Stanford, brought over 120 IP faculty to Boalt for a 2-day conference.
- Patents and Diversity in Innovation, Peter Menell spoke at University of Michigan Law School on Cross-Benefit Analysis Across Industries on September 29-30, 2006.
- In connection with the School of Information (SIMS) Distinguished Lecture featuring Fred Schneider, SIMS, BCLT and SLTPPC sponsored a Trust Privacy Workshop on October 5-6, 2006 at Boalt Hall.
- China IPR Leadership Program was held October 9 through October 19, 2006, sponsored by BCLT and Haas School of Business.
- BCLT hosted this Workshop on Trade Secret Law on October 13, 2006.
- BCLT, Santa Clara Law School and SVIPLA hosted an evening program for patent practitioners, PTO Rulemaking Event, on October 26, 2006, followed by the Patent Policy in the Supreme Court and Congress conference on October 27, 2006.
- Pam Samuelson, Deirdre Mulligan, and Ken Goldberg were co-chairs of a symposium entitled, Unblinking: New Perspectives on Visual Privacy in the 21st Century, sponsored by BCLT, TRUST, CITRIS, CNM, and UC Berkeley College of Engineering, held on November 3-4, 2006.
- Robert Barr, Pam Samuelson and Peter Menell presented at Boston University at a Software Patent Conference, sponsored by BCLT, Boston University, Computer & Communications Industry Association, MIT Sloan School of Management, Public Patent Foundation and Research on Innovation on November 17, 2006.
- The University of Texas School of Law, BCLT and Stanford University Law School hosted the Seventh Annual Advanced Patent Law Institute in San Jose on November 29-December 1, 2006.
- On December 7-8, 2006 BCLT and LexisNexis hosted Copyright – From Traditional Concepts to the Digital Age, held in San Francisco.
- The Fourth Annual Telecommunications and IP Conference was sponsored by BCLT and Seoul National University in Hawaii on January 12-13, 2007.
- BCLT co-sponsored FTC/DOJ Hearings at the UC Berkeley Haas Business School, on January 30 - 31, 2007.
- On February 16, 2007 BCLT will host the Federal Circuit Bar Association.
- March 9-10, 2007, BCLT will host our Annual Symposium on Copyright, DRM Technologies and Consumer Protection, sponsored by BCLT, BTJ and the Institute for Information Law at the University of Amsterdam (IVIIR).
- BCLT will host a Corporate Counsel Summit on March 22, 2007.
- BCLT will co-sponsor the CIP Forum, May 20-23, 2007.
- The Eighth Annual IP Retreat for Federal Judges will be held in Berkeley in May 2007, co-sponsored by the Federal Judicial Center and BCLT.
- The Seventh Annual IP Scholars Conference, sponsored by BCLT, DePaul, Stanford and Cardozo will be held on August 9-10, 2007.

A MESSAGE FROM THE EXECUTIVE DIRECTOR



I'd like to take this opportunity to thank our generous sponsors and other supporters who have participated in our programs and to highlight some exciting developments at BCLT.

BCLT has been active in patent reform for several years, participating in studies of the patent system by the Federal Trade Commission and the National Academies' Board on Science, Technology and Economic Policy, hosting conferences and facilitating dialogue among the diverse interests that are affected by the patent system. In the past year we hosted a conference on the Political Economy of Patent Reform and a Town Hall meeting with Jon Dudas, Under Secretary of Commerce for Intellectual Property, and Director of the United States Patent and Trademark Office, PTO General Counsel James Toupin, Acting Deputy Commissioner for Patent Examination Policy Jay Lucas and over 300 interested practitioners. BCLT faculty also participated in amicus briefs for several key patent cases, including two Supreme Court patent cases, e-bay vs MercExchange and KSR vs Teleflex. This year we are embarking on an exciting new research project on patent policy and entrepreneurship, pursuant to a generous grant from the Ewing Marion Kauffman Foundation. BCLT faculty will be working with two new full time Research Fellows in Law and Economics to study the impact of the current patent system, and of proposed changes to the patent system, on entrepreneurial activity in various industries.

Our work on patent reform is just one example of BCLT's collaborative, interdisciplinary work on important policy issues. Last year's successful symposium on the Legal and Policy Challenges of Stem Cell Research Policy brought together experts in various legal and scientific disciplines and generated several important articles published in the Berkeley Technology Law Journal. This year we are working with the Institute for Information Law at the University of Amsterdam on a symposium on Copyright, Digital Rights Management Technologies, and Consumer Protection; the Seoul National University Center for Law & Technology on our annual Conference on Telecommunication and Intellectual Property: U.S. and Asian Perspectives; and Chalmers University of Technology and Goteborg University on CIP Forum 2007 in Sweden. We also continue to work closely with other Research Centers on the Berkeley campus, including the Center for Research on Chinese & American Strategic Cooperation and the Competition Policy Center.

We are pleased to welcome our seventh Faculty Director, Professor Paul Schwartz, a leading international expert on information privacy and information law. Paul adds a significant new dimension to our growing community of law and technology faculty, students and research fellows. We look forward to the continuing expansion of our research, programs and curriculum, with a little help from our friends.



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

Intellectual Property in the New Technological Age, Aspen Law & Business, 4th ed. with Statutory Supplement (with R. Merges and M. Lemley) (forthcoming 2006)

Software and Internet Law, Aspen Law & Business, 3rd ed. (with R. Merges, P. Samuelson and M. Lemley) (forthcoming 2006)

Unwinding Sony (with D. Nimmer)

Bankruptcy Treatment of Intellectual Property Assets, Berkeley Technology Law Journal (forthcoming 2007)

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

Intellectual Property, chapter in *Handbook of Law and*

Economics, edited by A. Mitchell Polinsky and Steven Shavell (forthcoming 2007) (with S. Scotchmer)

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

Regulating Spyware: The Limitations of State "Laboratories" and the Case for Federal Preemption of State Unfair Competition Laws, 20 *Berkeley Technology Law Journal* 1363 (2005)

Indirect Copyright Liability: A Re-examination of Sony's Staple Article of Commerce Doctrine, 20 *Berkeley Technology Law Journal* 511 (2005) (Amicus Curiae brief submitted in *Metro-Goldwyn-Mayer Studios Inc. et al. v. Grokster, Ltd.*, et al. (U.S. Supreme Court)).

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



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

Intellectual Property in the New Technological Age, Aspen Law & Business, 4th ed. with Statutory Supplement (with R. Merges and M. Lemley) (forthcoming 2006)

Software and Internet Law, Aspen Law & Business, 3rd ed. (with R. Merges, P. Samuelson and M. Lemley) (forthcoming 2006)

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

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)

Incentives to Challenge and Defend Patents: Why Litigation Won't Reliably Fix Patent Office Errors and Why Administrative Patent Review Might Help, 19 *Berkeley Tech. L.J.* 943-970 (2004) (with Joseph Farrell, Professor of Economics, U.C. Berkeley)

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 (2004) (with Ashish Arora); Notes and Comments: Special Section: Comments on Ashish Arora and Robert Merges, "Specialized supply firms, property right and firm boundaries," 14 *Industrial and Corporate Change* 1195-1240 (2005)

"From Medieval Guilds to Open Source: Informal Norms, Appropriability Institutions, and Innovation," presented at Conference on the Legal History of Intellectual Property. Madison, WI, 2004.

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.



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 at Boalt Hall. Before coming to Boalt, she was staff counsel at the Center for

M. Meingast, J. King, and D. Mulligan. *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, March 2007.

Noticing Notice: A large-scale experiment on the timing of software license agreements, (with Nathaniel Good, Jens Grossklags and Joe Konstan) (forthcoming CHI Proceedings 2007)

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

ACCURATE (A Center for Correct, Usable, Reliable, Auditable and Transparent Elections), *Public Comment on the Manual for Voting System Testing & Certification*

Program, Submitted to the United States Election Assistance Commission, October 31, 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) June 2006

User choices and regret: Understanding users' decision process about consensually acquired spyware, (with Nathaniel Good, Jens Grossklags, David Thaw, Aaron Perzanowski and Joseph Konstan), *I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY*, Vol. 1, Issue (2006)

Storing Our Lives Online: Expanded Email Storage Raises Complex Policy Issues (with Ari Schwartz and Indrani Mondal), *I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY*, Vol. 1, Issue 2 (2005)

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.

LAW & TECH COURSES

SPRING 2007 COURSES

- > Antitrust & IP
- > Biotechnology & Chemical Patent Law
- > Computer Law
- > Copyrights
- > CyberLaw
- > Intellectual Property in the Entertainment Industries
- > Introduction to Intellectual Property
- > Mergers & Acquisitions in High Tech
- > Patent Litigation
- > Patent Prosecution
- > Playing by the Rules: Video Game Law
- > Tax Issues Facing Technology Venture Start-Ups
- > Trade Secrets
- > Trademark Law
- > Samuelson Law, Technology & Public Policy Clinic Seminar & Clinic

STUDENT ACTIVITIES

Students at Boalt have a unique opportunity to participate in a diverse set of activities and organizations and to explore IP and technology law from a broad spectrum of perspectives, including:

- > iL Technology Law Mentor Program
- > Annual Review of Law and Technology
- > BCLT/BTLJ Lunch Speaker & reception Series (weekly)
- > BCLT Fellowship Program
- > Berkeley Technology Law Journal (BTLJ)
- > boalt.org
- > Boalt Hall Patent Law Society
- > Certificate Program
- > Chillingeffects.org
- > Moot Court Competitions
- > Samuelson Law, Technology & Public Policy Clinic
- > Sports and Entertainment Law Society
- > Universities Allied for Essential Medicines



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 Boards of Directors for the Electronic Frontier Foundation and the Open Source Application Foundation.

Software and Internet Law, Aspen Law & Business, 3rd ed. (with R. Merges, P. Samuelson and M. Lemley) (forthcoming 2006)

Patent Reform Through the Courts, Forthcoming 50 Communications of the ACM (March 2007)

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

IBM's Pragmatic Embrace of Open Source, 49 Comm ACM 21 (October 2006)

Questioning Copyright in Standards, forthcoming in BC Law Rev

Copyrighting Standards, 49 Comm ACM 27 (June 2006)

The Generativity of Sony v. Universal: The Intellectual Property Legacy of Justice Stevens, 74 Fordham L. Rev 1831 (2006)

Regulating Technical Design, 49 Comm ACM 25 (Feb. 2006)
Legally Speaking: Did MGM Really Win the Grokster Case?, 48 Comm. ACM 19 (October 2005)

Brief Amici Curiae of 60 IP and Tech Law Professors and the United States Public Policy Committee of the ACM in Support of Respondents in Metro-Goldwyn-Mayer Studios v. Grokster. Also published in 20 Berkeley Tech. L. J. 535 (2005)

Sensor Networks & Privacy, presentation given at the Securing Privacy Conference, Stanford University, March 13, 2004

Intellectual Property Arbitrage: How Foreign Rules Can Affect Domestic Protections, 71 Chi. L. Rev. 223 (Winter 2004)



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 at schools, including Boston College Law School.

Information Privacy Law, (Aspen Press, Second edition, 2006), Daniel J. Solove & Marc Rotenberg, co-authors

Privacy, Information, and Technology, (Aspen Press, 2006), Daniel J. Solove & Marc Rotenberg, co-authors

Notification of Data Security Breaches, 105 Michigan Law Review -- (forthcoming 2007), Edward Janger, co-author

Book Review - Beyond the "War" on Terrorism: Towards the New Intelligence Network, 103 Michigan Law Review 1446 (2005), Ronald D. Lee, co-author

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 (2003), William Treanor, co-author

Eldred and Lochner: Copyright Term Extension and Intellectual Property as Constitutional Property, 112 Yale Law Journal 2331 (2003), William Treanor, co-author

German and U.S. Telecommunications Privacy Law: Legal Regulation of Domestic Law Enforcement Surveillance, 54 Hastings Law Journal 751 (2003)

Voting Technology and Democracy, 75 N.Y.U. Law Review 625 (2002)



Howard A. Shelanski

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? working paper (With Michael Katz) (2006).

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

Mergers and Innovation, forthcoming, Antitrust L.J. (With Michael Katz) (2006).

Telecommunications Law and Policy, Carolina Academic Press (With Stuart Benjamin, Douglas Lichtman, and Philip 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 Michael 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 (Co-edited with François LeVêque) (2005).

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

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

Competition Policy for Mobile Broadband Networks, 3: J. Telecom. & High Tech. Law 97 (2004).



Molly Van Houweling

IP, TECHNOLOGY LAW, PROPERTY, CONSTITUTIONAL LAW

Molly Shaffer Van Houweling joined the Boalt 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 Boalt 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.

Recent publications:

Cultural Environmentalism and the Constructed Commons, Law and Contemporary Problems, (forthcoming).

Commentary, "Bouncing Around in Culture: Creativity, Spontaneity and Physicality in Copyright Policy", U.C. Davis L. Rev., (forthcoming).

Communications' Copyright Policy, *Journal on Telecommunications & High Technology Law* (forthcoming 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)

Cultivating Open Information Platforms: A Land Trust Model, 1 Journal on Telecommunications & High Technology Law 309 (2002)

Recent presentations:

Copyright Servitudes. Presentation to the University of Michigan Law School's Cyberlaw and Economics Workshop (April 7, 2005)

Communications' Copyright Policy. Presentation to the Silicon Flatirons Telecommunications Program's 2005 conference on "The Digital Broadband Migration: Rewriting the Telecom Act" (February 14, 2005)

Board membership:

Creative Commons

SPONSORING FIRMS

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- › Van Pelt, Yi & James LLP

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LAW & TECHNOLOGY



BOALT HALL SCHOOL OF LAW

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
- › Center for Information Technology Research in the Interests of Society (CITRIS), UC Berkeley
- › Center for Intellectual Property Studies, Gothenburg & Chalmers University of Technology
- › Haifa Center of Law & Technology (HCLT)
- › Institute for Information Law (IVIIR), 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
- › School of Information Management and Systems (SIMS), 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)

AFFILIATED SCHOLARS

- › Sally M. Abel (BCLT)
- › Stephen R. Barnett (Boalt Hall)
- › Robert Blackburn (DNAlex)
- › Robert Berring '74 (Boalt Hall, SIMS)
- › Karen Boyd '96 (BCLT)
- › Aaron Burstein (BCLT & Samuelson Clinic Fellow)
- › Alissa Centivany (BCLT Microsoft Fellow)
- › Aaron Edlin (Law, Economics)
- › Joseph Farrell (Economics)
- › Richard J. Gilbert (Business, Economics)
- › Bronwyn H. Hall (Economics)
- › Chris Hoofnagle (BCLT & Samuelson Clinic Fellow)
- › Thomas Jorde (Boalt Hall)
- › Michael L. Katz (Business, Economics)
- › Rahul Kapoor (BCLT)
- › Maryanne McCormick (BCLT & Samuelson Clinic Fellow)
- › David Mowery (Business)
- › Erin Murphy (Boalt Hall)
- › David Nimmer (Irell & Manella, UCLA)
- › Raymond Ocampo (BCLT)
- › Jack Lerner (Samuelson Clinic Fellow)
- › Daniel Rubinfeld (Boalt Hall)
- › AnnaLee Saxenian (SIMS & City and Regional Planning)
- › Suzanne Scotchmer (Economics, Public Policy)
- › Marjorie Shultz (Boalt Hall)
- › Carl Shapiro (Business, Economics)
- › Lon Sobel (Southwestern University)
- › David Teece (Business)
- › Hal R. Varian (SIMS, Business, Economics)
- › Oliver Williamson (Business, Economics)
- › Brian Wright (Agriculture and Resource Economics)