The Copyright Principles Project Goes to Washington

In the Spring of 2013, Professor Pamela Samuelson testified before the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet at a hearing titled "A Case for Consensus Building: The Copyright Principles Project." Led by Professor Samuelson, the Copyright Principles Project (CPP) was launched in 2007 to consider what possible improvements could be made to existing U.S. copyright law. Professor Samuelson’s statement, video of the hearing, and the CPP report are available at http://www.law.berkeley.edu/15595.htm. Professor Samuelson will continue this conversation with practitioners, academics, and government officials in Spring 2014 at the 18th Annual BCLT/BTLJ Symposium: The Next Great Copyright Act.

Professor Paul Schwartz to Lead ALI Restatement Project on Information Privacy Law

The American Law Institute (ALI) recently announced that it will start an information privacy law project. BCLT’s Professor Paul Schwartz and GWU Law Professor Daniel Solove were selected to lead the project, titled “The Restatement Third, Information Privacy Principles.” Assisting Professors Schwartz and Solove will be a 35-40 person team of privacy experts from academia, the courts, and industry. The ALI says the purpose of the project is to bring clarity to information privacy law, which is currently an assortment of laws and regulations that differ from jurisdiction to jurisdiction. With this goal in mind, Professor Schwartz said that he and Professor Solove will attempt to draft a volume that “is concrete enough to be explanatory but with abstract enough principles that it will be applicable for 10 to 15 years.”

This American Copyright Life: Reflections on Re-equilibrating Copyright for the Internet Age

In January 2013, Professor Peter Menell presented the Brace Lecture, the Copyright Society’s major annual address, in New York City. The personalized, remixed, multimedia extravaganza called attention to the dismal state of copyright’s public approval rating. Drawing on the format and style of Ira Glass’s “This American Life” radio broadcast, the presentation unfolded in three parts: Act I – How did we get here?; Act II – Why should society care about copyright’s public approval rating?; and Act III – How do we improve copyright’s public approval rating and efficacy? The lecture was well-received and Professor Menell has since been on an impromptu national tour, with follow-up presentations in Washington, D.C., Los Angeles, San Francisco, Berkeley, and Davis. Future venues include Burbank, Bloomington, Chicago, and Tel Aviv.
BCLT Faculty Contribute to National Academies Report on Copyright in the Digital Era

In May 2013, the National Academies released a report entitled *Copyright in the Digital Era: Building Evidence for Policy*. Several BCLT faculty contributed to the project including Professors Peter Menell, Molly Van Houweling, and Pamela Samuelson. The report calls on federal agencies and foundations to support a broad range of empirical research studies to contribute to the comprehensive review of U.S. copyright law recommended by Register of Copyrights Maria Pallante and House Judiciary Committee Chairman Bob Goodlatte. The report also urges the federal government to consider instituting two regular, systematic surveys—one of businesses on their acquisition and use of intellectual property of all types and the other of consumers to understand how digital content is created and used. Information about the project can be found at:
http://sites.nationalacademies.org/PGA/step/copyrightpolicy/
Robert Barr is the Executive Director of the Berkeley Center for Law and Technology and Lecturer-in-Residence at Berkeley Law. Prior to joining BCLT as Executive Director in 2005, 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 5,000 issued and 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 at Hastings College of Law from 1995-1999, where he taught patent prosecution.

Robert has been a prominent patent attorney in Silicon Valley for over 25 years. He started his patent practice at the law firm of Townsend and Townsend. He has also been a partner at Brobeck, Phleger & Harrison LLP and Weil, Gotshal & Manges LLP, where he specialized in patent strategy counseling for clients in the computer, telecommunications and semiconductor industries. He is currently counsel to the law firm of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP.

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

Kenneth A. Bamberger is an expert on government regulation and corporate compliance, especially with regard to issues of technology, free expression, and information privacy. Bamberger’s research more generally covers risk regulation, the use of technology in regulation and compliance, and the role of private actors in regulation. His groundbreaking study of corporate privacy practices in the U.S. and Europe, Privacy on the Ground (conducted with Professor Deirdre Mulligan), will be published by MIT Press in 2014. He teaches Administrative Law, First Amendment Law, and Technology and Governance.

Recent Publications
- Privacy in Europe: Initial Data on Governance Choices and Corporate Practices
  George Washington Law Review, Vol. 81, no. 5 (with Deirdre K. Mulligan) (September 2013)
- New Governance, Chief Privacy Officers, and the Corporate Management of Information Privacy in the United States: An Initial Inquiry
- PIA Requirements and Privacy Decision Making in U.S. Government Agencies
  Privacy Impact Assessments (De Hart and Wright, eds) (with D. Mulligan) (2012)

Robert Merges’ most important recent project is Justifying Intellectual Property, a book published by Harvard University Press in 2011. A comprehensive statement of mature views on the ethical and economic foundations of IP law, the book reviews foundational philosophical theories of property and contemporary theories about distributive justice and applies them to IP; identifies operational high-level principles of IP law; and, with all this as background, works through several pressing problems facing IP law today. Merges has also undertaken extensive revisions to two of the casebooks he coauthors, to update them in light of the America Invents Act which largely took effect in 2013.

Recent Publications
- The Relationship between Foundations and Principles in IP Law
- Priority and Novelty under the AIA
**Chris Hoofnagle**

privacy, computer crime, online advertising, web privacy measurement

Professor Hoofnagle is Director of Information Privacy Programs for BCLT. His research focuses upon the structure of legal and economic relationships that lead to tensions between firms and individuals, manifested through information privacy problems, gaps in understanding of legal protections, deficits in consumer law protections, and the problem of financial fraud. Hoofnagle has written extensively in the fields of information privacy, the law of unfair and deceptive practices, consumer law, and identity theft. He has also written on payments technologies with a focus upon mobile payments, consumer attitudes toward and knowledge of privacy law, identity theft, the First Amendment, and the government's reliance on private-sector databases to investigate citizens.

**Deirdre Mulligan**

information technology, law & policy, privacy, security, copyright

Professor Mulligan's current research agenda focuses on information privacy and security. Current projects include qualitative interviews to understand the institutionalization and management of privacy within corporations in several countries, and empirical work exploring how internet users conceptualize privacy problems. Other areas of research include digital rights management technology and privacy and security issues in sensor networks and visual surveillance systems, and alternative legal strategies to advance network security.

**Peter Menell**

intellectual property, computer law, entertainment law, property law

Reflecting his training in economics and law, Professor Menell's research focuses principally on the role and design of intellectual property law with particular emphasis on the digital technology and content industries. His current projects explore the role of notice in developing tangible and intangible resources, patent claim construction, the justifications for and contours of indirect copyright liability and the adaptation of content and digital technology industries to the internet age. During 2012, Menell was one of the inaugural Thomas Alva Edison Visiting Professionals at the United States Patent & Trademark Office (USPTO).

**Pamela Samuelson**

copyright, patent, internet and digital media, cyberlaw

Pamela Samuelson has recently been developing ideas for copyright reform, including suggestions for constraining the proper scope of the derivative work right and proposing guidelines for awarding statutory damages against infringers. She is also working on a number of papers about intellectual property protection for computer programs. She serves on the board of directors of the Electronic Frontier Foundation as well as on the advisory boards for the Center for Democracy & Technology, Public Knowledge, and the Berkeley Center for New Media.
LAW & TECHNOLOGY

Faculty

Paul M. Schwartz
privacy, data security, cyberlaw, intellectual property

Professor Schwartz's scholarship focuses on how the law has sought to regulate and shape information technology, as well as the impact of information technology on law and democracy. At present, he is engaged in several different research projects, including research into comparative privacy developments in the U.S. and the European Union as well as into privacy and security in the Cloud. He recently published a paper in Harvard Law Review on the EU’s draft General Data Protection Regulation.

RECENT PUBLICATIONS
Privacy Law Fundamentals, Second Edition
International Association of Privacy Professionals (with Daniel Solove). (2013)

The EU-US Privacy Collision: A Turn to Institutions and Procedures

Information Privacy in the Cloud

EU Privacy and the Cloud: Consent and Jurisdiction Under the Proposed Regulation
12 PWRR 710 (2013)

Suzanne Scotchmer
intellectual property, R&D incentives, law & economics

Professor Scotchmer's main research area is the economics, policy and law of innovation, including intellectual property. In the past three years, she has developed two new courses, Digital Antitrust and How Lawyers Use Economics. The Digital Antitrust course discusses antitrust and litigation of damages in intellectual property cases, the choice of appropriate discount rates, how costs should be calculated in regulatory rule making and in tort liability and the problem of take-downs. Her research agenda in law is similarly focused on incentive problems of the digital age, but she also maintains a research agenda in the economics side of incentive theory.

RECENT PUBLICATIONS
Patents in the University: Priming the Pump and Crowding Out
(2012)

Picking Winners in Rounds of Elimination
(With Junjie Zhou) (2012)

Ideas and Innovations: Which Should Be Subsidized?
(2011)

Jennifer Urban ‘00
copyright, intellectual property, privacy, licensing, emerging artists, patents

Professor Urban directs the Samuelson Law, Technology & Public Policy Clinic. She is presently working on a series of empirical studies of consumer understandings and attitudes toward privacy in mobile and web applications with Chris Hoofnagle, on a study of patent judges with Mark Lemley, on digitization and libraries with the Berkeley Digital Library Copyright Project, and on takedown of content by intermediaries. Her recent paper with Jason Schultz sets out a novel patent licensing scheme for practitioners of “open” innovation strategies. In the Clinic, she is working on copyright limitations and exceptions for emerging artists and cultural repositories, and privacy in the cloud and “smart” ecosystems, such as networked electricity grids.

RECENT PUBLICATIONS
What Constitutes a Diligent Search Under Present and Proposed Orphan Work Regimes?

Privacy and Modern Advertising: Most US Internet Users Want Do Not Track to Stop Collection of Data about their Online Activities
(with Chris Hoofnagle & Su Li) (2012)


Molly S. Van Houweling
copyright, digital media, intellectual property, technology law

Much of Professor Van Houweling's research focuses on copyright law's implications for new information technologies (and vice versa). One strand of her research explores how legal rules designed to regulate sophisticated commercial actors impact unsophisticated individuals who are empowered by information technology. Another strand explores how those individuals are deploying copyright law themselves in ways that appear both to enrich and complicate the creative environment. Professor Van Houweling often explores these and other intellectual property issues using theoretical and doctrinal tools borrowed from the law of tangible property. She is currently working on a book, tentatively entitled Property's Intellect, that focuses on these connections.

RECENT PUBLICATIONS
Land Recording and Copyright Reform

Technology and Tracing Costs: Lessons from Real Property
Intellectual Property and the Common Law (Shyam Balagopal, ed.) (forthcoming 2013)

Touching and Concerning Copyright

Author Autonomy and Atomism in Copyright Law
Patrick Goold is the 2012-14 BCLT Microsoft Fellow. He is in the final stages of completing his PhD in Law from the International Max Planck Research School for Competition and Innovation, Germany. His research interests include competition law, IP law, public international law, and legal theory. He completed his undergraduate studies at Newcastle University and an LLM program at Cornell University.

Kathryn Hashimoto is the 2010-13 BCLT Copyright Research Fellow. She graduated from the University of San Francisco School of Law in 2010. While in law school, she interned at the Electronic Frontier Foundation and with EFF Legal Director Cindy Cohn co-authored “The Case for Book Privacy Parity: Google Books and the Shift from Offline to Online Reading” (2010) for the Harvard Law & Policy Review Online.

Michael Mattioli, the 2011-13 BCLT Microsoft Fellow, is an Associate Professor at the Indiana University Maurer School of Law where he teaches contracts and a variety of IP courses. Michael’s scholarship, which focuses on communities of innovation, has been published in the Columbia Law Review and the Northwestern University Law Review. Prior to joining BCLT, Michael was the 2010-11 Post-doctoral Fellow in Law, Economics, and Technology at the University of Michigan Law School. Michael graduated from Penn Law School in 2007.

Jonas Anderson, the 2009-11 BCLT Microsoft Fellow, is currently Assistant Professor of Law at American University, Washington College of Law where he teaches courses in patent law, trade secret law, and real property. Prior to coming to Berkeley, Jonas clerked for the Honorable Alan D. Lourie on the U.S. Court of Appeals for the Federal Circuit. He graduated from Harvard Law School in 2006.

Aaron Perzanowski, the 2008-09 BCLT Microsoft Fellow, is currently Assistant Professor at Case Western Reserve University of Law. Aaron’s research is in the areas of copyright, trademark and telecommunications law; it examines the influence of law and technology on the creation and exchange of information. Aaron graduated from Berkeley Law in 2006.

Stuart Graham, the 2007-09 BCLT Kauffman Foundation Fellow in Social Science and the Law, served as the first Chief Economist for the U.S. Patent and Trademark Office. Stuart has written on companies’ intellectual property and litigation strategies, patenting by high-tech startups and entrepreneurs, and comparisons of the US and European patent systems. He is currently Assistant Professor at Georgia Tech Ernest Scheller Jr. College of Business.

Ted Sichelman, the 2008-09 BCLT Kauffman Foundation Legal Research Fellow, is currently Assistant Professor at the University of San Diego School of Law teaching intellectual property law. His current research efforts explore theories of patent remedies, the effects of the patent system on entrepreneurial companies and the role of patent law in technology commercialization. Ted graduated from Harvard Law School in 1999.

Miriam Bitton, the 2007-08 BCLT Microsoft Fellow, is now an Associate Professor at Bar-Ilan University in Ramat-Gan, Israel. Miriam is writing and teaching in the fields of intellectual property law, technology and technology law. Prior to joining Bar-Ilan University she taught at DePaul University College of Law and was a clerk to the Honorable Jacob Turek of the Israel Supreme Court and also to the Attorney General of Israel. She earned bachelor’s degrees in LL.B. and masters of law (M.A.), magna cum laude, degrees from the Bar-Ilan University in Israel and LLM. and S.J.D. degrees from the University of Michigan Law School.

Samuelson Law, Technology & Public Policy Clinic

Founded in 2001, the Samuelson Law, Technology and Public Policy Clinic (SLTPPC) provided the first opportunity in legal academia for students to represent public interest clients, concerns, and constituencies in key debates and litigation concerning the fundamental public policies at the intersection of law and technology. Covering topics as diverse as access to knowledge, privacy, life sciences, consumer rights, free speech and intellectual property, SLTPPC students participate in all aspects of technology policy at both the state and national levels—from litigation and counseling clients to drafting legislation to injecting public policy considerations into technology research and development. SLTPPC students work in collaboration with clinic faculty and staff as well as the University of California’s preeminent computer science, life science, public health and engineering faculty.

SLTPPC students have represented clients in legal matters before federal agencies, federal district and appellate courts, the California Supreme Court, the U.S. Supreme Court, the California Assembly and Senate and in technical standard-setting committees. In addition, clinic students have written and contributed to research reports and white papers, on behalf of clients, on a broad range of topics related to intellectual property and technology law and policy. Through these diverse projects, SLTPPC students and faculty work to fulfill the Clinic’s dual mission: to provide a voice for the public’s interest in law and technology issues, and to teach law students, via real work for live clients, how to develop and apply the fundamental skills of lawyering to the public policy questions of our time.

Fall 2012

BCLT hosted David Viadeck, Director of the Federal Trade Commission's consumer protection efforts, for a panel discussion entitled The Obama Record on Consumer Protection. Viadeck presented the agency's recent enforcement initiatives in areas including identity protection and truth-in-advertising. The panel featured UC Berkeley consumer protection and privacy experts Professors Ted Mermin, Deirdre Mulligan, and Jennifer Urban.

The inaugural ChiPs Women in IP National Summit brought together women leaders from across industry, private practice, government, judiciary, administrative agencies, academia, and more to engage in a dialogue on cutting edge issues relating to intellectual property. BCLT was a proud co-sponsor along with RPX Corporation, Fish & Richardson, WilmerHale, and Weil, Gotshal & Manges.

New Developments in Chinese IP Law: Copyright Revisions and Enforcement Challenges brought together senior policymakers, academics, and international practitioners from China and the U.S. Co-sponsored by BCLT, Loyola (LA) Law School, and the Renmin University of China IP Academy, the conference focused on the implications of recent revisions to the Chinese Copyright laws and enforcement challenges in China for holders of Chinese IP rights.

At RAND Revisited: Current Developments in the Law of Standards-Essential Patents, economists and legal scholars joined practitioners from law firms and corporations to discuss the future of RAND. Participants tackled questions including: What is a RAND royalty and how should it be determined? Under what legal theories can the RAND obligation be enforced? Should injunctions or exclusion orders be available and, if so, under what circumstances?

BCLT and the High Tech Law Institute at Santa Clara University co-hosted a conference entitled Solutions to the Software Patent Problem. Patent experts at the conference presented innovative proposals that ranged from abolishing software patents completely to company/industry self-help.

The 13th Annual Advanced Patent Law Institute: Silicon Valley included two days of in-depth presentations by leading academics, practitioners, and judges on the latest patent law developments. The event was co-hosted by the Stanford Program in Law, Science & Technology, UT Austin Law School and BCLT.
Spring 2013


The 6th Annual BCLT Privacy Lecture: Data Access & Retention in the EU and US was presented by Joel Reidenberg of Fordham Law School. Professor Reidenberg presented his perspectives on European privacy law and, in particular, the growing tension between data protection and data retention/surveillance in Europe. Responses were presented by Kurt Wimmer and Professor Anu Bradford and the lecture was moderated by Professor Paul Schwartz.

The 2nd Annual UC Berkeley School of Law Privacy Forum: Silicon Valley featured leading academics and practitioners discussing the latest developments in privacy law. UC Berkeley School of Law faculty presented cutting-edge scholarship, and panelists discussed the implications for real-world information privacy law problems. The keynote was presented by Travis LeBlanc, Special Assistant Attorney General at the California Department of Justice.

The 17th Annual BCLT/BTLJ Symposium: Reform(ali)zing Copyright for the Internet Age focused on issues surrounding copyright formalities, such as registration of claims and placing notices on copies. The conference considered, among other things, the role that formalities can play in addressing today’s copyright challenges. The keynote was delivered by Maria Pallante, Register of Copyrights and Director of the U.S. Copyright Office. Articles from the Symposium will be published in a special edition of the Berkeley Technology Law Journal.

The Federal Judicial Center Judicial Training program for judges, Intellectual Property in the New Technological Age, returned to Berkeley in May. The four-day training is led by Professor Peter Menell and features experts in patent law, copyright law, trademark law, and more. BCLT also hosted a reception and dinner honoring federal judges attending the program.

The 6th Annual Privacy Law Scholars Conference saw its most successful year to date, assembling almost 300 privacy law scholars and practitioners from around the world to discuss current issues and foster greater connections between academia and practice. The event was co-sponsored by BCLT and the George Washington University Law School.

Each year, the Intellectual Property Scholars Conference brings together IP scholars to present their works-in-progress in order to benefit from the critique of colleagues. The 2013 IPSC was held in New York, NY at the Benjamin N. Cardozo School of Law at Yeshiva University. The conference is co-sponsored by BCLT; the Benjamin N. Cardozo School of Law at Yeshiva University; DePaul University College of Law; and the Stanford Program in Law, Science & Technology.

As part of the Samuelson Clinic Privacy Scholarship Series, author Evgeny Morozov discussed his new book, To Save Everything, Click Here, The Folly of Technological Solutionism at an event titled The Silicon Valley Technocrats. BCLT co-sponsored this event, which was led by Professor Chris Jay Hoofnagle.

BCLT and the law firm of Wilson Sonsini Goodrich and Rosati co-hosted The Supreme Court and DNA Patents: A Myriad of Ramifications in the weeks after the U.S. Supreme Court ruled in AMP v. Myriad Genetics, Inc. Panelists discussed the meaning and impact of the Court’s decision, which held that isolated naturally-occurring human DNA is not patentable subject matter, but synthetic c-DNA is patent eligible.
Consumer Advocacy and Protection Society (CAPS)
The Berkeley Consumer Advocacy and Protection Society (CAPS) is dedicated to fostering research, discussion and advocacy in the field of consumer protection law. It seeks to strengthen ties between consumer law groups and the Berkeley Law community. This includes creating networks between consumer law attorneys, advocacy organizations and the student body. Its activities promote the field of consumer protection law and provide training opportunities for students, foster community among student advocates whose interests intersect with consumer protection, and encourage and maintain consumer protection curriculum and clinic opportunities at Berkeley Law.

Healthcare and Biotech Law Society
Members of the Healthcare and Biotech Law Society examine and analyze the intersection between law, society, policy and science. Their mission is to foster discussion on emerging health/biotech issues and to stimulate the intellectual and professional development of Boalt students interested in these issues. They do this by organizing networking events with practitioners, promoting health and biotech courses at Berkeley Law and increasing interaction between Berkeley Law and other healthcare and biotech related institutions at UC Berkeley and beyond.

Patent Law Society
The Boalt Hall Patent Law Society provides a forum for students interested in practicing patent law to discuss and debate the latest developments in this specialty. The Group often engages patent law practitioners to share their experiences through student presentations. These and other events provide opportunities for members of the Patent Law Society to interact, network and exchange ideas.

Sports and Entertainment Law Society
The mission of the Sports and Entertainment Law Society (SELS) is to educate the Berkeley Law community about legal opportunities and issues in the entertainment and sports industries. SELS also strives to facilitate opportunities for students to network not only with each other, but also with legal professionals in these industries. SELS regularly sponsors many events during the academic year, including both guest lectures and social events. SELS thereby provides a resource for students to connect with alumni and other industry-leading professionals and seek employment opportunities in the sports and entertainment industries.

Universities Allied for Essential Medicines
Universities Allied for Essential Medicines (UAEM) links members of universities in the U.S., the U.K. and Canada who are concerned about patient access to medicines in poor countries. Its mission is to promote access to medicines and medical innovations in low and middle-income countries by changing norms and practices around academic patenting and licensing; to ensure that university medical research meets the needs of people worldwide; and to empower students to respond to the access and innovation crisis.
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Center for Information Technology Research in the Interests of Society (CITRIS), UC Berkeley
Center for Intellectual Property Studies (CIP), Gothenburg & Chalmers University of Technology
Competition Policy Center (CPC), Haas School of Business, UC Berkeley
Haifa Center of Law & Technology (HCLT), University of Haifa
Institute for Information Law (IViR), University of Amsterdam
Institute for Business Innovation, Haas School of Business, UC Berkeley
Lester Center for Entrepreneurship & Innovation, Haas School of Business, UC Berkeley
Samuelson Law, Technology, & Public Policy Clinic, Berkeley Law, UC Berkeley
School of Information (ISchool), UC Berkeley
Seoul National University Center for Law & Technology, Seoul National University
Swiss Federal Institute of Technology - Eidgenössische Technische Hochschule Zürich (ETH)
Team for Research in Ubiquitous Secure Technology (TRUST), Tel-Aviv University

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