

# BCLT ANNUAL BULLETIN

UC BERKELEY SCHOOL OF LAW

BERKELEY CENTER FOR LAW & TECHNOLOGY

## BCLT DEVELOPMENTS & EVENTS

### Highlights of Events from 2008

Patent law scholars gathered at BCLT for a roundtable session discussing proposals for reform of the Court of Appeals for the Federal Circuit.

BCLT and BTLJ hosted over 300 people for our 2-day Symposium on IP & Entrepreneurship.

Our China IPR training program featured a discussion with Chinese officials on "IP cooperation efforts between China and the US" and "Defending against IP actions in the US"

Our First Annual Privacy Lecture featured an address by David Cole, Professor of Law at Georgetown University Law Center.

BCLT held a conference on the Law and Business of Online Advertising in Berkeley, co-hosted by the Santa Clara University School of Law.

A conference on Legal Outsourcing, co-sponsored with the Institute for Global Challenges and the Law, analyzed the risks and benefits of outsourcing patent drafting and legal work to other countries.

BCLT initiated the first gathering of Bay Area IP and high technology law faculty in the Bay Area to discuss current developments and research.

BCLT and the Federal Judicial Center continued their collaboration with the 11<sup>th</sup> Annual IP in the New Digital Age Program for District Court Judges.

Israeli lawyers from Tel Aviv University, who attended advanced legal courses at Boalt this summer, were guests at a BCLT dinner.

Nine BCLT faculty and fellows presented at the IP Scholars Conference held at Stanford Law School.

BCLT co-sponsored the "Federal Circuit Visits the Valley" program with the Federal Circuit Bar Association.

The Annual Advanced Patent Law Institute, co-sponsored by BCLT, Stanford Law School and the University of Texas was held in Santa Clara.

### Upcoming Events for the Spring 2009 Academic Year

BCLT will host a conference on Patent Valuation in Berkeley on February 6, 2009.

This year's BCLT/BTLJ Annual Symposium will be held on March 6, 2009 and will examine the impact of security breach notification laws on businesses and consumers in terms of identity theft, privacy and credit monitoring.

BCLT will continue its Annual Privacy Speaker Series on March 16, 2009. Richard Epstein's presentation will be "Confronting the Third-Party Doctrine and the Privacy of Personal Information."

On April 30, 2009 BCLT and Santa Clara Law School will collaborate on a Symposium, "Reflections on the 100th Anniversary of the 1909 Copyright Act."

The next Corporate IP Counsel Summit, sponsored by BCLT and IPotential will be held in April 2009.

The April BTLJ Banquet celebrates the incoming board of the Berkeley Technology Law Journal — a great opportunity for attorneys to meet members of BTLJ and reconnect with alumni.

A Technology Law Update will bring in-house Counsel and attorneys to Berkeley from sponsoring firms to discuss recent cases and changes in the law.

BCLT and the Federal Judicial Center will co-sponsor the 12<sup>th</sup> Annual Intellectual Property in the New Digital Age Program.

Co-sponsored by BCLT, the Tech Policy Summit will bring together prominent leaders from the private and public sectors to examine critical policy issues impacting technology innovation and adoption in the United States and beyond.

BCLT will host the 2nd Annual Privacy Law Scholars Conference on June 4 & 5, 2009.

The Society for Economic Research on Copyright Issues will hold their 2009 congress in Berkeley on July 9 & 10, 2009.

## RECENT NEWS FROM BCLT

We are pleased to announce that Professor Suzanne Scotchmer and Stephen Maurer have joined Berkeley Law. Maurer and Scotchmer will be working with BCLT to establish a law and social science research program focused on innovation, science and technology policy. Scotchmer will hold a half-time tenured appointment at Berkeley Law, and Maurer will have a research appointment at BCLT with the title of Lecturer in Residence. He will retain his position at the Goldman School for Public Policy.



Suzanne Scotchmer is Professor of Economics, Law and Public Policy at the University of California, Berkeley. Her current research focuses on the economics, policy and law of innovation, including intellectual property. She also maintains an interest in economic theory and game theory, on which she has also published widely. Her graduate degrees are in economics and statistics.



Stephen M. Maurer is Director of the Goldman School Project on Information Technology and Homeland Security ("ITHS"). He teaches and writes in the fields of homeland security, innovation policy, and the new economy. Maurer's current research interests range from homeland security to designing better institutions for neglected disease research.



BCLT Executive Director Robert Barr's far-reaching impact on Berkeley Law and the intellectual property field will be honored in perpetuity through a newly created scholarship in his name. Each year, the scholarship will be awarded to a student who has demonstrated financial need and a strong interest in technology law. The recipient will receive \$10,000 per academic year and engage in specialized studies with Barr and other prominent IP scholars at the school.

The scholarship was initiated by Mallun Yen '95 and her husband, Jason Lemkin '96. Yen worked with Barr at Weil, Gotshal & Manges and later joined him at Cisco, where Barr was its first vice president of intellectual property—and Yen was his first attorney hire. When Barr left Cisco in 2005 to run BCLT, Yen succeeded him as head of the company's worldwide IP.

Yen enlisted the help of Bart Showalter, firm-wide chair of IP at Baker Botts, and G. Hopkins Guy III, a patent litigation partner at Orrick Herrington & Sutcliffe. They had all worked closely with Barr, and together approached some of his current and former colleagues.

"Each of us started making calls and I don't think I got a 'no' from anybody," says Showalter. "That reflects how much people think of Robert. This scholarship is perfect recognition for what he has meant to so many of us in the IP field."



## Amy Kapczynski

### IP, A2K, GLOBAL HEALTH, INTERNATIONAL LAW

Amy Kapczynski received her J.D. from Yale Law School (2003). She spent several years in the U.K. as a Marshall Scholar, receiving an M.A. in Literature from Queen Mary and Westfield College, University of London (1998), and an M.Phil in

the Sociology and Politics of Modern Society from Cambridge University (1997).

Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 Yale L.J. Pocket Part 202 (2008).  
<http://thepocketpart.org/2008/06/01/kapczynski.html>

*The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 Yale L.J. (2008).

"The Story of Minister of Health v. Treatment Action Campaign," forthcoming in *Human Rights Law Stories* (Foundation Press, 2008).

*Addressing Global Health Inequities: An Open Licensing Approach for University Innovations* (with S. Chaifetz, Z. Katz, and Y. Benkler), *Berkeley Technology Law Journal* (2005).

"Global Health and University Patents" (Editorial), published in *Science* (2003) (with E. T. Crone & M. Merson).

*Historicism, Progress, and the Redemptive Constitution*, published in the *Cardozo Law Review* (2005).

*Sexual Privacy and the Unexamined Limits of Antidiscrimination Law*, published in the *Yale Law Journal* (2003).

*Queer Brinkmanship: Citizenship and the Solomon Wars*, published in the *Yale Law Journal* (2002).



## 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.

*Intellectual Property in the New Technological Age* (with R. Merges and M. Lemley) (Aspen Law & Business, 1st ed. 1997, 2nd ed. 2000, 3rd ed. 2003, 4th ed. 2006, 4th ed. revised, 2007) (with Case and Statutory Supplement and Teacher's Manual).

*Software and Internet Law* (with M. Lemley, R. Merges, and P. Samuelson) (Aspen Law & Business 2000, 2nd ed. 2003, 3rd ed. 2007) (with Teacher's Manual).

*Patent Case Management Judicial Guide* (with L. Pasahow, J. Pooley, and M. Powers) (Federal Judicial Center, forthcoming 2008).

*Intellectual Property and the Law of Land*, 30, *Regulation No.* 4, p. 64 (Winter 2008).

*Knowledge Access and Preservation Policy in the Digital Age*, 44 *Houston Law Review* 1013 (2007).

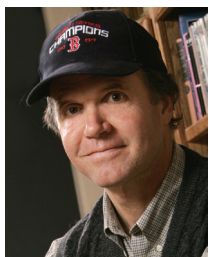
*Intellectual Property and the Property Rights Movement*, 30 *Regulation No.* 3, p. 36 (Fall 2007).

*Intellectual Property Law*, chapter in *Handbook of Law and Economics*, edited by A. Mitchell Polinsky and Steven Shavell (2007) (with S. Scotchmer).

*Legal Realism in Action: Indirect Copyright Liability's Continuing Tort Framework and Sony's de facto Demise*, 55 *UCLA L. Rev.* 143 (2007) (with D. Nimmer).

*The Property Rights Movement's Embrace of Intellectual Property: True Love or Doomed Relationship?*, 34 *Ecology Law Quarterly* 713 (2007).

*Unwinding Sony*, 95 *California Law Review* 941 (2007) (with D. Nimmer).



## 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.

*Locke for the Masses: Property Rights and the Products of Collective Creativity*, *Hofstra Law Review*, Ideas Section (forthcoming 2009).

*An Estoppel Doctrine for Patented Standards* (with J. Kuhn), *California Law Review* (forthcoming 2008).

*The Economics of Intellectual Property Law* (Editor) (Economic Approaches to Law Series, Edward Elgar Publishers, 2008), vol. 1 and 2.

*Software and Patent Scope: A Report from the Middle Innings*, 85 *Tex. L. Rev.* 1528 (2007).

Book Review of Zorina Khan, *The Democratization of Invention: Patents and Copyrights in American Economic Development, 1790-1920*, *Software Patents: Economic Impacts and Policy Implications*, 45 *J. Econ. Lit.* 452-460 (2007) (featured review).

Locke, Remixed :-), 40 *U.C. Davis L. Rev.* 1259 (2007).

*Intellectual Property in the New Technological Age* (with P. Menell and M. Lemley) (N.Y.: Aspen Law and Business) (4th rev. ed. 2007); with Teacher's Manual.

*Software and Internet Law* (with M. Lemley, P. Samuelson, P. Menell) (Aspen Law & Business) (3d ed. 2007); with Teacher's Manual.

*Patent Law and Policy* (4th ed. 2007) (with J. Duffy) with Teacher's Manual.

#### Presentations:

"The Concept of Property in the Digital Age," Baker Botts Distinguished Lecture, University of Houston, April 1, 2008.

*IP and New Business Models: Patent Quality and Reliable Assets*, presentation at annual Almaden Institute, IBM, San Jose, CA, May 8, 2008, York, September 10, 2007.



## Deirdre K. Mulligan

### PRIVACY, IP, CYBERLAW

Deirdre K. Mulligan is an Assistant Professor at the UC Berkeley School of Information. Previously she was a Clinical Professor at Berkeley Law and Director of the Samuelson Law, Technology & Public Policy Clinic. She served previously as staff

counsel at the Center for Democracy & Technology in Washington. Professor Mulligan's current research agenda focuses on information privacy and security.

*Privacy Decision Making in Administrative Agencies* (with Kenneth Bamberger) 75 *U. Chi. L. Rev.* 75 (2008).

*The Magnificence of the Disaster: Reconstructing the Sony BMG Rootkit Incident* (forthcoming, *Berkeley Technology Law Journal*) (with A. Perzanowski).

*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*. *IVS*, Vol. 1, Issue 1 (with N. Good, J. Grossklags, D. Thaw, A. Perzanowski and J. Konstan) (2006).



## 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.

*Are Patents on Interfaces Impeding Interoperability?*, 94 Minn. L. Rev. (forthcoming 2009).

*Unbundling Fair Uses*, 77 Fordham L. Rev. (forthcoming 2009).

*The Strange Odyssey of Software Interfaces and Intellectual Property Law*, in *Con/Texts of Invention* (M. Biagioli, et al., eds. forthcoming 2008).

*Quantifying the Value of Patent Exhaustion Rules*, 51 Comm. ACM (forthcoming Nov. 2008).

*Revisiting Patentable Subject Matter*, 51 Comm. ACM 20 (July 2008).

*How to Achieve (Some) Balance in Anti-Circumvention Laws*, 51 Comm. ACM 21 (Feb. 2008).

*Hacking Intellectual Property Law*, 51 Comm. ACM 65 (Jan. 2008).

*Should Copyright Owners Have to Give Notice About Their Use of Technical Protection Measures?*, 6 J. Telecom. & High Tech. L. 41 (2007) (with J. Schultz), republication forthcoming in *Digital Rights Management Technologies* (ICFAI 2008).

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

*Does Copyright Law Need to Be Reformed?*, 50 Comm. ACM 19 (Oct. 2007).



## 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).

*Information Privacy Statutes and Regulations 2008-2009*, Aspen Publishers (2008), D. Solove, co-editor.

*Revising Telecommunications Surveillance Law*, 75 University of Chicago Law Review 287 (2008).

*Data Mining and Internet Profiling: Emerging Regulatory and Technological Approaches*, 75 University of Chicago Law Review 261 (2008), I. Rubinstein and R. Lee, co-authors.

*Anonymous Disclosure of Security Breaches*, in *Securing Privacy in the Internet Age*, forthcoming Stanford University Press, A. Chandler, L. Gelman & M.J. Radin, eds. (2008), E. Janger, co-author.

*Technology, Civil Liberties, and National Security*, in *Security v. Liberty: Conflicts Between National Security and Civil Liberties in American History*, 189 Russell Sage Foundation, D. Farber, ed. (2008), Ronald D. Lee, co-author.

*Notification of Data Security Breaches*, 105 Michigan Law Review 913 (2007), E. Janger, co-author.

*Information Privacy Law*, Aspen Publishers (Second edition, 2006), D. Solove & M. Rotenberg, co-authors.

*Privacy, Information, and Technology*, Aspen Publishers (2006), D. Solove & M. Rotenberg, co-authors. Abridged version of casebook, *Information Privacy Law*, for use in cyberlaw, information law and other courses.

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

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



## 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.

*Network Neutrality: Regulating With More Questions Than Answers*, 6 J. On Telecomm. & High Tech. L. 23 (2007).

*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*, 96 Geo. L.J. 885 (2008).

*Cultural Environmentalism and the Constructed Commons*, 70 Law & Contemp. Probs. 23 (2007).

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

*Communications' Copyright Policy*, 4 J. Telecomm. & High Tech. L. 97 (2005).

*Distributive Values in Copyright*, 83 Texas L. Rev. 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*,

*Journal of Telecommunications and High Technology Law*, 1 J. Telecomm. & High Tech. L. 309 (2002).

#### Presentations:

*Author Autonomy and Atomism in Copyright Law*. Presentation to the Property Works in Progress Conference, University of Colorado School of Law, June 13, 2008.

*The New Servitudes*. University of Chicago Law School Faculty "Mobblog," Feb. 4-8, 2008.

*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.

## SPONSORING FIRMS

### BENEFACTORS

- › Cooley Godward Kronish LLP
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- › ThinkFire Services USA, Ltd.
- › Warner Bros.
- › Yahoo! Inc.



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## BCLT FELLOWS

- › Stuart Graham (BCLT Kauffman Research Fellow)
- › Chris Hoofnagle (BCLT Director of Information Privacy Programs)
- › Jennifer King (BCLT Research Specialist)
- › Aaron Perzanowski '06 (BCLT Microsoft Research Fellow)
- › Ted Sichelman (BCLT Kauffman Research Fellow)
- › Tara Wheatland '06 (BCLT Copyright Research 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
- › Center for Information Technology Research in the Interests of Society (CITRIS), UC Berkeley
- › Center for Intellectual Property Studies, Gothenburg & Chalmers University of Technology
- › Competition Policy Center (CPC), Haas School of Business, UC Berkeley
- › Haifa Center of Law & Technology (HCLT)
- › Institute for Information Law (IViR), 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
- › 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)



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