

BCLT ANNUAL BULLETIN

BOALT HALL SCHOOL OF LAW, 2005-06

UNIVERSITY OF CALIFORNIA, BERKELEY

BCLT DEVELOPMENTS & EVENTS FOR 2005 - 2006

- **Molly Shaffer Van Houweling** joined the Boalt faculty as an Acting Professor of Law in fall 2005 from the University of Michigan Law School.
- **Robert Barr** joined BCLT as Executive Director from Cisco Systems, where he was the vice president of intellectual property and worldwide patent counsel.
- **Margaret Jane Radin** (Stanford Law School) and **Paul Schwartz** (Brooklyn Law School) are visiting Boalt Hall in fall 2005.
- **Pilar Ossorio** and **R. Alta Charo** (University of Wisconsin Law School) are visiting Boalt Hall in spring 2005.
- **Microsoft** is funding research by BCLT faculty with a gift of one million dollars over four years. The million dollar gift will fund faculty research, exchanges, workshops, and a Microsoft Fellow. The first year's research by **Pamela Samuelson** will focus on secondary liability of technology developers for user infringements while **Robert Merges** will focus on patent trolls and relevant policy issues.
- BCLT's **Tenth Annual Symposium** – co-sponsored by the Berkeley Technology Law Journal and the Berkeley Center for Law, Business & the Economy – will focus on the **Legal and Policy Issues in Stem Cell Research**. The conference will be held March 2 - 4, 2006 with a special Symposium volume to be published by BTLJ.
- BCLT hosted a workshop, sponsored by Sun Microsystems, with law and technology scholars entitled “**Patents and Interoperability**” on September 16, 2005. The workshop aimed to reach a consensus on how to resolve tensions posed by patents on interfaces that affect interoperability.
- **Peter Menell** and **Robert Merges** did an extensive review of intellectual property issues for the **US Court of Appeals for the Fifth Circuit**.
- BCLT co-sponsored a conference on **Investing in Emerging Countries** with the Haas Business School Institute of Management, Innovation & Organization on October 7, 2005. **Robert Barr**, Executive Director for BCLT, moderated a panel on IP issues.
- The University of Texas School of Law, BCLT, and Stanford University Law School will host the **Sixth Annual Advanced Patent Law Institute** in San Jose on December 1-2, 2005.
- BCLT is co-sponsoring the “**Standardization: Unifier or Divider**” conference December 5 - 7, 2005 in Vancouver, British Columbia with Sun Microsystems, Microsoft, and the Bolin Group.
- A meeting of the **Anti-Spyware Coalition** will be hosted by BCLT on December 9, 2005. Current ASC members include: AOL, Dell, Earthlink, McAfee, Microsoft, Symantec, and Yahoo, among others.
- The Ecole des Mines and BCLT are co-sponsors for the **Third Biannual Antitrust and Regulation Conference** – organized by **Howard Shelanski** – to be held in Paris on January 12 - 13, 2006.
- The **Third Annual Telecommunications and IP Conference** will be co-sponsored with Seoul National University in Hawaii on February 10 - 11, 2006.
- BCLT will be hosting a “**Patent Reform Roundtable**” in late spring. This event follows up on BCLT's Eighth Annual Conference “Implementing Reform of the Patent System” and on patent reforms now working their way through Congress.
- The **Seventh Annual IP Retreat for Federal Judges** will be held in Berkeley on June 7 - 9, 2006, co-sponsored by the Federal Judicial Center and BCLT. This three-day program will feature an integrated set of lectures by BCLT's Directors, distinguished scholars, federal judges, and leading intellectual property law practitioners.
- The **Sixth Annual IP Scholars Conference** will be hosted by BCLT on August 10 - 11, 2006.
- Pamela Samuelson and Visiting Professor Margaret Jane Radin are holding an **IP Scholarship Seminar** at Boalt Hall in the fall 2005 semester. Fourteen noted scholars are presenting their latest research involving the ongoing evolution of contract and property in an IP context.
- Boalt Hall is offering a unique “**Wine Law**” course, taught by **Richard Mendelson** of Dickenson Peatman & Fogarty in fall 2005. The course is the first full-semester wine law course presented in the United States.
- **Deirdre Mulligan** is co-Principal Investigator on an NSF grant to fund ACCURATE, which will assist in a national effort to improve the reliability and trustworthiness of electronic voting technology. A Research Fellow will be hired to support Professor Mulligan's research.
- **Pamela Samuelson** is co-Principal Investigator on the TRUST grant from the NSF, in coordination with CITRIS, to support work on sensor network and privacy issues. BCLT will be hiring a Fellow using TRUST funds to work with Professors Mulligan and Samuelson on the analysis of trustworthy information systems.

A MESSAGE FROM THE EXECUTIVE DIRECTOR



It is with great enthusiasm that I assume the duties of Executive Director of BCLT. In its first ten years, the Center has earned a reputation for excellence in teaching, research and interaction with the legal, business and policy-making communities. We are constantly strengthening our acclaimed Intellectual Property program as we expand into other areas of the law that are impacted by new technologies, including: privacy, spyware, electronic commerce, telecommunications regulation, consumer protection, computer crimes, digital rights management, security, e-voting, and biomedical ethics. We continue to add distinguished faculty in these areas and attract top-quality students interested in law and technology.

At UC Berkeley we have a unique opportunity to do interdisciplinary work with other research centers and world-class faculty in business, economics, engineering, information science and the life sciences. Our upcoming symposium on Legal and Policy Issues in Stem Cell Research is just one exciting example of how we can take advantage of this fusion to make a significant contribution to public policy on issues that will affect our lives for years to come. With the hiring of three new Research Fellows, we will continue to expand our research and publishing activities as well as our excellent workshops and conferences.

I am looking forward to this opportunity to apply my expertise and experience to BCLT and to work with law firms, companies and foundations as well as our faculty, students and loyal alumni. Together we will ensure that BCLT will always be a place where leading scholars, attorneys, entrepreneurs, and policymakers can exchange ideas at the intersection of law, business and technology.

The future is here, and BCLT is ready.



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, 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)

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

Economic Aspects of Intellectual Property, in Encyclopedia of Law and Society: American and Global Perspectives, Sage Publications (forthcoming 2005)

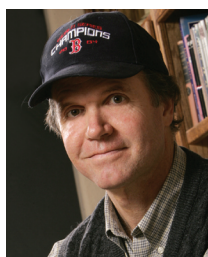
Indirect Copyright Liability: A Re-examination of Sony's Staple Article of Commerce Doctrine, 20 Berkeley Technology Law Journal 511 (2005)

Intellectual Property, chapter in the Handbook of Law and Economics, edited by A. Mitchell Polinsky and Steven Shavell (forthcoming 2005) (with S. Scotchmer)

Bankruptcy Treatment of Copyrights, Chapter 19A of Nimmer on Copyright (2005)

The Rise of Internet Interest Group Politics, 19 Berkeley Technology Law Journal 1 (2004) (with A. Burstein and W. DeVries)

Pre-existing Confusion in Copyright's Work-for-Hire Doctrine, 50 J. Copyright Society 399 (with D. Nimmer & D. McGimsey) (2003)



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.

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)

A Transactional View of Property Rights, Berkeley Technology Law Journal (forthcoming, 2006)

Specialized Supply Firms, Property Rights and Firm Boundaries, 13 Industrial and Corporate Change 451-475 (with Ashish Arora) (2004)

A Response to the Commentators, response to specially commissioned comments on the original paper by five economists, 15 Ind. & Corp. Change (forthcoming issue 1, 2006)

Taught a course on *Theoretical Foundations of Intellectual Property*, at the Max Planck Institut, joint summer program with George Washington University (July 2005)

Legal and Economic Patent Law Scholarship in the U.S., presentation at the University of Mannheim, Germany (July 2005)

Patent Law Reform: Perspectives and Predictions, presentation at the National Academies of Science, Patent Reform Conference (June 9, 2005)

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

Compulsory Licensing vs. the Three "Golden Oldies": Property Rights, Contracts, and Markets, Cato Institute, Cato Policy Analysis No. 508 (January 15, 2004)



Deirdre K. Mulligan

PRIVACY, IP, CYBERLAW

Deirdre K. Mulligan is the director of the Samuelson Law, Technology & Public Policy Clinic and an acting clinical professor of law at Boalt Hall. Before coming to Boalt, 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.

Data Mining and Privacy: An Overview (Christopher J. Clifton, Deirdre K. Mulligan, Raghu Ramakrishnan), book chapter (2005)

Stopping Spyware at the Gate: A User Study of Privacy, Notice and Spyware (Nathan Good, Rachna Dhamija, Jens Grossklags, Steven Aronovitz, David Thaw, Deirdre Mulligan and Joseph Konstan), Proceedings of the Symposium on Usable Privacy and Security (SOUPS 2005), Carnegie Mellon University CyLab (2005)

Storing Our Lives at the ISP: Greater Storage Leads to Complex Policy Issues (Ari Schwartz, Deirdre K. Mulligan and Indrani Mondal), I/S: A Journal of Law and Policy for the Information Society, Vol. 1, Issue 2 (2005)

Reasonable Expectations in Electronic Communications: A Critical Perspective on the Electronic Communications Privacy Act, 72 Geo. Wash. L. Rev. 1557 (2004)

Implementing Copyright Limitations in Rights Expression Languages (Deirdre K. Mulligan and Aaron J. Burstein), Digital Rights Management (2004)

Preliminary Analysis of E-Voting Problems Highlights Need for Heightened Standards and Testing (Deirdre K. Mulligan and Joseph Lorenzo Hall), National Research Council, Committee on Electronic Voting, National Academies Press (2004)

The Dangers of Code-based Public Policy Enforcement (Deirdre K. Mulligan and John S. Erickson), Proceedings of the IEEE (Institute of Electrical and Electronics Engineers, Inc.), Special Issue on Digital Rights Management Technology (2004).

SELECTED LAW & TECHNOLOGY COURSES

FALL 2005 COURSES

Antitrust and IP.....	(Miller)
Comparative Antitrust Law.....	(Shelanski, Levêque)
Contracts.....	(Merges)
Introduction to Intellectual Property.....	(Schwartz)
Intellectual Property Strategy.....	(Kapoor)
IP Scholarship Seminar: Property & Contract.....	(Samuelson, Radin)
Intellectual Property Transactions.....	(C. Nadan, M. Nadan)
Law & Tech Writing Seminar.....	(Menell, Barr)
Samuelson Clinic & Seminar.....	(Mulligan)
Wine Law.....	(Mendelson)

SPRING 2006 COURSES

Antitrust Analysis.....	(Edlin)
Biotechnology Patent Law Seminar.....	(Ossorio)
Computer Law.....	(Dettermann)
Copyright.....	(Samuelson)
Cyberlaw.....	(Schultz)
Historical Perspectives to IP.....	(Merges)
Introduction to Intellectual Property.....	(Menell)
Law, Science & Biotechnology.....	(Ossorio)
Law, Technology & Public Policy Clinic.....	(Mulligan)
Mergers & Acquisitions in High Tech.....	(Kennedy)
Patent Litigation.....	(Powers, Winters, Reines)
Trademarks.....	(Fritz, Abel)
Trade Secrets.....	(Pooley)

TECHNOLOGY CORE FACULTY



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.

Enriching Discourse on Public Domains, 55 Duke LJ (forthcoming 2006)

Challenges in Mapping the Public Domain, in The Public Domain of Information (P. Berni Hugenholtz & Lucie Guibault, eds., forthcoming 2006)

Bakery. Selden, in *Intellectual Property Stories* (Rochelle C. Dreyfuss & Jane C. Ginsburg, eds. forthcoming 2006)

Did MGM Really Win the Grolster Case?, 48 Comm. ACM (forthcoming Oct. 2005)

The Supreme Court Revisits the Sony Safe Harbor, 48 Comm. ACM 21 (June 2005)

Legislative Challenges to the Sony Safe Harbor Rule, 48 Comm. ACM 27 (March 2005)

Brief Amici Curiae of 60 Intellectual Property and Technology Law Professors and the United States Public Policy Committee of the Association for Computing Machinery in Support of Respondents in Metro-Goldwyn-Mayer Studios Inc., et al., v. Grolster, Ltd., et al., 20 Berkeley Technology Law Journal. 535 (2005)

Selected talks and lectures:

Kip & Meredith Frey Lecture at Duke Law School

Niro Lecture at DePaul University Law School

Copyright and Consumer Protection, lecture at University of Washington Law School and University of Amsterdam Law School



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? forthcoming in Wayne Dale Collins (ed), *Issues in Competition Law and Policy*, ABA (with Michael Katz) (2006)

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

Antitrust, Patent, and Copyright: EU and US Perspectives, Edward Elgar (co-edited with François LeVêque) (2005)

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

Merger Policy and Innovation: Must Enforcement Change to Account for Technological Change? in Jaffe, et al. (eds) *Innovation Policy and the Economy*, MIT (with Michael Katz) (2004)

Transaction-Level Determinants of Transfer Pricing Policy: Evidence From the High Technology Sector, 13 *Indust. and Corp. Change* 953 (2004)

Telecommunications Mergers in the EU and the US: A Comparative Institutional Analysis, in Leveque and Shelanski (eds), *Merger Remedies in American and European Union Competition Law*, Edward Elgar (with Gilles LeBlanc) (2003)

Merger Remedies in American and European Union Competition Law, Edward Elgar (co-edited with François LeVêque) (2003)



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:

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:

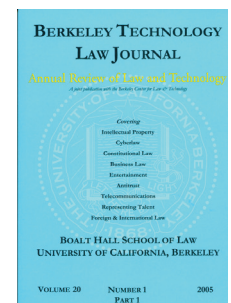
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STUDENT ACTIVITIES

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. Such activities and organizations include:

- Samuelson Law, Technology & Public Policy Clinic
- Berkeley Technology Law Journal (BTLJ)
- Annual Review of Law and Technology
- Certificate Program
- Nimmer on Copyright Internship
- boalt.org
- Moot Court Competitions

- Sports and Entertainment Law Society
- BCLT/BTLJ Lunch Speaker Series (weekly)
- BCLT/BTLJ Law Firm Receptions (weekly)
- BCLT Fellowship Program
- iL Technology Law Mentor Program
- Chillingeffects.org



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Institute of Management, Innovation & Organization, Haas School of Business, UC Berkeley
Management of Technology Program, Haas School of Business, UC Berkeley
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Seoul National University Center for Law and Technology (SNU CLT)
Swiss Federal Institute of Technology (Eidgenössische Technische Hochschule Zurich (ETH))
Team for Research in Ubiquitous Secure Technology (TRUST)

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Richard J. Gilbert (Business, Economics)
Bronwyn H. Hall (Economics)
Jenny Lanjouw (Agriculture and Resource Economics)
Michael L. Katz (Business, Economics)
David Mowery (Business)
Erin Murphy (Boalt Hall)
David Nimmer (Irell & Manella, UCLA)
Jack Lerner (Samuelson Clinic)
Daniel Rubinfeld (Boalt Hall)
AnnaLee Saxenian (SIMS, City and Regional Planning)
Suzanne Scotchmer (Economics, Public Policy)
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