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TECHNOLOGY: TRANSFORMING THE REGULATORY ENDEAVOR

THURSDAY
03//03//2011



BERKELEY CENTER
FOR LAW & TECHNOLOGY
2011 SPRING SYMPOSIUM

TECHNOLOGY: TRANSFORMING THE REGULATORY ENDEAVOR

OVERVIEW

This Symposium, to be held on **Thursday, March 3, 2011** at UC Berkeley, School of Law [Boalt Hall], will address the ways that technological developments are transforming the task of regulation.

The two morning panels will provide a discussion of the broad issues affecting this transformation. The first panel will consider the increasing attempts to use technology to enhance regulatory capacity, both by using it to improve government capacity for decisionmaking and monitoring, and by employing “code” as a regulatory tool in addition to formal law. It will address both the powerful potential of this development, as well as some of the concerns it raises. The second panel will consider the challenges posed for legislation and regulatory promulgation by the rapid technological change.

The keynote address by New York University Technology Scholar Helen Nissenbaum will consider the question of the “handoff” — when it is appropriate, or not, to make the move from conventional forms of regulation to technologically-based forms. This will set the stage for the three afternoon panels, which will address that question in three different substantive contexts: **environmental regulation, privacy regulation, and risk management.**



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8:00 – 8:30 am » REGISTRATION AND BREAKFAST

8:30 – 8:45 am » INTRODUCTION

Kenneth A. Bamberger // Assistant Professor_ UC Berkeley,
School of Law

8:45 – 10:00 am » **PANEL 1_ TRANSLATING BETWEEN LAW
AND TECHNOLOGY**


This panel will discuss the trend by which law and regulation are increasingly “translated” into technology. Government increasingly utilizes technology in making decisions; regulators increasingly expect private actors to incorporate technological means to “force” compliance with legal mandates; and private actors increasingly attempt to “build-in” legal compliance into the technologies they use, and products they build. While technology offers great promise as a “regulator,” however, the translation of law to “code” poses several distinct challenges: while law’s application changes over time, technological decision rules are fixed by computer code; while law is interpreted by lawyers, government officials and courts applying human judgment as new circumstances arise, the translation of legal mandates to technological ones is done, *ex ante*, by private actors trained in computer science; and while our legal system emphasizes transparency in legal decisionmaking, technological decisions are frequently opaque and inaccessible.

CONFIRMED PANELISTS

- » **Roger Brownsword** // Professor of Law_ Kings’ College, London // Director_ The Centre for Technology, Ethics and Law in Society [TELOS]
- » **Danielle Keats Citron** // Professor of Law_ University of Maryland School of Law

10:00 – 10:15 am » COFFEE BREAK

10:15 – 11:30 am »

PANEL 2_ TECHNOLOGY: SHAPING THE TASK OF LAWMAKING

Legislative drafting occurs against a background set of defaults embodied in norms and the built environment. Legislators, like others, often fail to appreciate the plasticity of the built environment against which they legislate and the relatively disruptive cycle of innovation. Laws preference for flexible standards, multi-part balancing tests, and the vague and ambiguous qualities of natural languages creates tension with the binary structures and formal languages used to establish system requirements further complicating legislative drafting. Judges, system designers, and academics have bemoaned the resulting problems of translation, evolvability, and lock-in. This panel will discuss these issues and seek to identify strategies for drafting legislation and system requirements.

CONFIRMED PANELISTS

- » **Travis D. Breaux** // Assistant Professor of Computer Science_ Carnegie Mellon University
- » **Susan Freiwald** // Professor of Law_ University of San Francisco
- » **Joseph Hall** // Joint Postdoctoral Researcher_ NSF ACCURATE Center, UC Berkeley School of Information and Princeton University's Center for Information Technology Policy (CITP)
- » **Deirdre K. Mulligan** // Assistant Professor_ UC Berkeley, School of Information

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11:45 – 1:00 pm »

DAVID NELSON MEMORIAL KEYNOTE & LUNCH

KEYNOTE SPEAKER

Helen Nissenbaum // Professor_ New York University
(Media, Culture, and Communication & Computer Science)

From Pre-emption to Circumvention: If technology regulates, why do we need regulation (and vice versa)?

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1:15 – 2:15 pm »

**PANEL 3_ TECHNOLOGY TRANSFORMING MONITORING:
THE CASE OF ENVIRONMENTAL REGULATION**

This panel explores how technology affects environmental regulation. Technology impacts environmental law in a variety of ways, such as the need for the regulatory system to adjust to risks caused by novel technologies like nanotech, or the ways in which improvements in modeling affect regulation in permits. The primary focus of this panel, however, will be on the interaction between new technologies and monitoring (which in turn can affect the feasibility of regulation). Two key examples are the potential use of “smart dust” [nano-sensors] for environmental monitoring and the prospects for carbon monitoring. Another possible example would be smart-metering as a basis for more sophisticated demand-side management of electricity. By changing what we can monitor, these new technologies can change what we can regulate or the reliability of the models on which we base regulation.

CONFIRMED PANELISTS

- » **Molly K. Macauley** // Research Director and Senior Fellow_ Resources for the Future
- » **Eric Biber** // Assistant Professor of Law_ UC Berkeley, School of Law
- » **Daniel A. Farber** // Professor_ UC Berkeley, School of Law

2:15 – 2:30 pm »

BREAK

2:30 – 3:45 pm »

PANEL 4_ TECHNOLOGY TRANSFORMING BEHAVIORAL CONSTRAINTS: THE CASE OF PRIVACY-BY-DESIGN

Privacy advocates and regulators, as well as industry, have increasingly turned to technological features and systems—such as “privacy by design” as well as technological decision-support systems—to constrain and guide behaviors in ways intended to conform with law. These questions implicate the ways that the standardization of privacy may promote that effort, and the possibilities and perils of developing such privacy taxonomies for use in corporate decisionmaking.

CONFIRMED PANELISTS

- » **Ira Rubinstein** // Senior Fellow_ Information Law Institute, New York University School of Law
- » **Joanne McNabb** // California Office of Privacy Protection
- » **Kelly Caine** // Principal Research Scientist_ School of Informatics and Computing, Center for Law, Ethics, and Applied Research in Health Information, Indiana University
- » **Frederick Hirsch** // Nokia Inc. // Co-Chair_ W3C DAP Working Group

3:45 – 4:00 pm »

BREAK

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4:00 – 5:15 pm »

**PANEL 5_ TECHNOLOGY TRANSFORMING
DECISIONMAKING: THE CASE OF RISK MANAGEMENT**

Technology increasingly provides means to shape and improve risk management in the governance of a variety of arenas, from financial markets to terrorism prevention to nuclear power management. This panel considers the tremendous potential of such technology, and explores areas of caution.

CONFIRMED PANELISTS

- » **George E. Apostolakis** // Commissioner_ United States Nuclear Regulatory Commission // Professor of Nuclear Science and Engineering, and Professor of Engineering Systems_ Massachusetts Institute of Technology
- » **Stephen R. Kroll** // former Chief Counsel and Deputy Executive Director_ Congressional Oversight Panel on the Troubled Asset Relief Program
- » **Eric Talley** // The Rosalinde and Arthur Gilbert Foundation Professor of Law_ UC Berkeley // Co-Director_ Berkeley Center for Law, Business, and the Economy

5:15 – 5:30 pm »

CLOSING REMARKS

Kenneth A. Bamberger // Assistant Professor_ UC Berkeley, School of Law

5:30 – 7:00 pm »

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- Please check here if you do not want your contact information released to our symposium partners.

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The registration fee includes:

- » Continental breakfast and break refreshments
- » Catered lunch
- » Reception

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Transforming the Regulatory Endeavor Symposium

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Information about travel and local hotels is available on the conference web site. For questions, please email David Grady at dgrady@law.berkeley.edu

Please note: This event is wheelchair accessible. For disability related accommodations contact David Grady. Advance notice is requested.



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