

## SLTPPC Alumni Newsletter



SLTPPC Fall 2015 Class



## Directors' Note

By Catherine Crump & Jennifer Urban

Greetings from the Samuelson Clinic!

This fall, we welcomed new and returning clinic students back to campus with a docket that covers a wide range of issues—from police body-worn cameras, to electronic monitoring of youth on probation, to trademark counseling, and much more.

Inside you will find highlights of our recent work, including details about our students' work to support the mission of non-profit Authors Alliance (see pages 2 and 3) and an update on the *FTC v. Wyndham* case in which the clinic submitted an amicus brief last year (see page 4). We're also pleased to share your updates (see page 5) as well as our own (see page 6).

Please consider supporting our work by making a gift to the Samuelson Clinic as a part of your year-

end giving. Your contributions help us advance the public interest in technology law and policy and train the next generation of legal advocates.

Please [click here](#) to make your donation online, or send a check payable to "UC Regents/Samuelson Law, Technology & Public Policy Clinic" to:

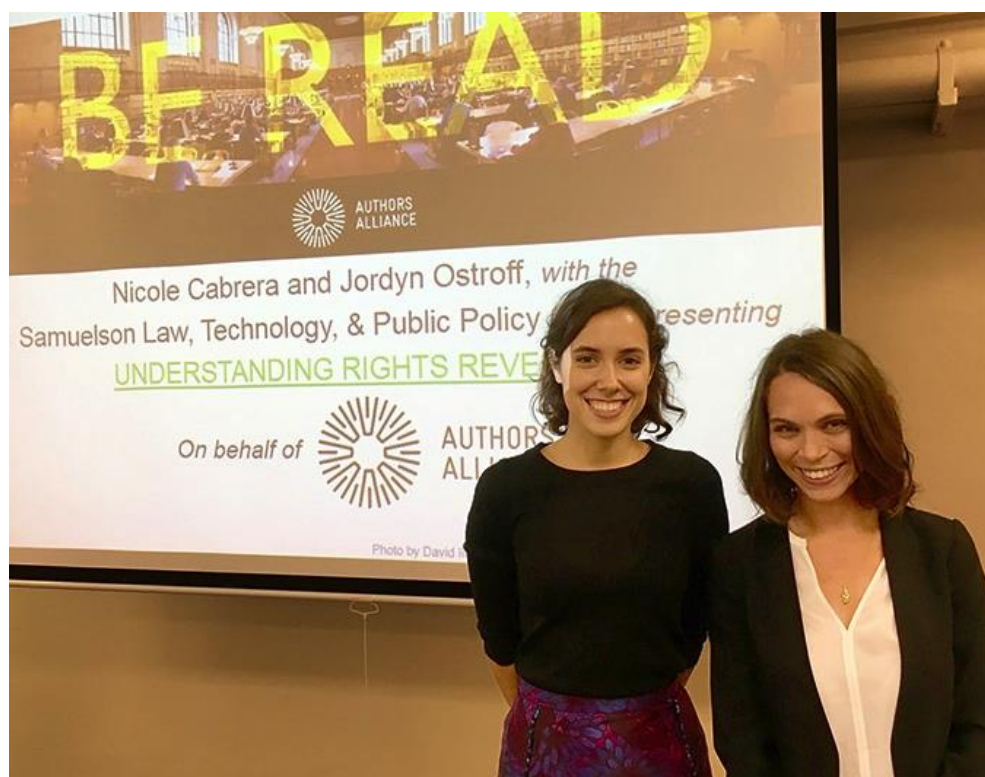
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## Rights Reversion: On the Road

*SLTPPC students share their expertise and help make rights reversion a reality for more authors*

By Nicole Cabrera '16 & Jordyn Ostroff '16

As advanced students with the Samuelson Clinic this semester, we have continued our work on rights reversion for [Authors Alliance](#). Authors Alliance is a non-profit organization that promotes authorship for the public good by supporting and advocating on behalf of authors who write to be read. Last year, we authored [Understanding Rights Reversion](#), a guide for authors who want to make their books more available to readers but are prevented from doing so by the terms of their publishing contracts. Authors Alliance has since published a print and electronic edition of the guide.

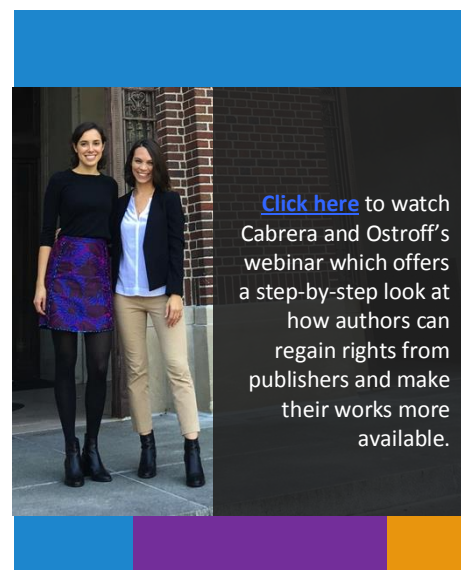
This fall, we have helped bring the guide to broader audiences by distilling the information in the guide into a presentation that explains how authors can use the information and strategies captured in the guide to get back the rights in their books from their publishers. So far, we have presented this overview of the guide in a webinar for research librarians as well as at a workshop for authors at the University of Michigan.

We are also working directly with several authors to help them get back the rights to their books from their publishers so that they can achieve their goals for their books, whether that means making their books openly accessible online, publishing revised editions, or reinvigorating sales. We hope that these efforts will produce successful reversions that can serve as motivating examples for other authors who want to take control of their books' destinies and make them available in new ways. To that end, we are also responding to authors' requests for additional guidance by creating materials that will help authors draft their own letters requesting reversion from their publishers.

We are so grateful to have had the opportunity to continue working with Authors Alliance. Through our work, we have learned valuable lessons about copyright law, as well as conducting broad outreach to industry stakeholders and directly representing clients in negotiations. We have also refined our

research and writing skills, especially with regard to presenting digestible information for an audience composed primarily of laypersons.

It has been very rewarding to deepen our engagement with Authors Alliance's mission and the Samuelson Clinic, and to see our work have an impact on authors' careers and legacies.





## SLTPPC Students Co-Author Guide to Open Access

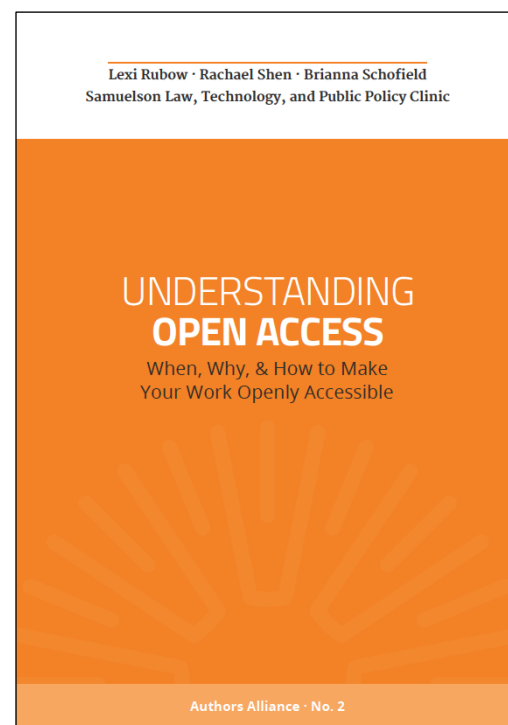
Until very recently, authors who wanted their works to be widely available had little choice but to submit their works to publishers who took assignments of the authors' copyrights and exercised them according to a proprietary "all rights reserved" model. The advent of global digital networks now provides authors with exciting new options for communicating their ideas broadly. One of these options is open access.

In fact, in recent years, open access opportunities have expanded, encompassing more communities of authors than ever before. The number and variety of open access repositories has grown, open access policies are becoming more common, and conventional publishers are increasingly willing to accommodate authors' open access goals.

[Understanding Open Access: When, Why, & How To Make Your Work Openly Accessible](#), co-authored by clinic students

Lexi Rubow '15 and Rachael Shen '16, helps authors determine whether open access is right for their works and, if so, how to make these works openly accessible. The guide is the second volume in a series of educational handbooks from non-profit [Authors Alliance](#).

*Understanding Open Access* addresses common questions and concerns about open access and provides real-life strategies and tools that authors can use to work with publishers, institutions, and funders to make their works more widely accessible to all. The information in the guide is based on extensive interviews Rubow and Shen conducted with authors, publishers, and institutional representatives who shared their perspectives on open access options in today's publishing environment.



### The Human Side of Machine Readability

*Interviewing authors who shared the ways that open access is beneficial to authors, readers, and the public interest was the highlight of the project for Rubow and Shen. This heartwarming story is one of the many "success stories" included in the guide.*

Cory Doctorow is a fiction writer, activist, blogger, and journalist and a member of Authors Alliance. After making his novel *Little Brother* openly accessible, Mr. Doctorow received a braille copy of the book from Patricia Smith, a Detroit public school teacher of visually impaired students. Although braille versions may be permissible under one or more copyright exceptions, creating a braille version often first requires painstakingly entering text into a digital format. This obstacle prevents many works from being translated into braille. However, because the text of *Little Brother* is openly available without technical limitations to prevent its copying, printing, and sharing, Ms. Smith was able to directly run the book's digital file through a braille embosser and make the book available to her visually impaired students.

Ms. Smith also included a note, which stated: "What I could not enclose is the gratitude from my braille reading students. For various reasons, most books in braille are aimed at younger children. My students are all between the ages of 12 and 15 and have no real interest in reading a Kindergarten level book. I was finally able to give them something interesting, compelling, and, most importantly at their grade level."

## Third Circuit Affirms FTC's Authority to Regulate Data Security

By Kelly Vargas '16



Kelly Vargas '16 co-authored an amicus brief in *FTC v. Wyndham* last fall. She reports here on the Third Circuit's decision in the case.

In late 2014, the Samuelson Law, Technology & Public Policy Clinic filed an [amicus brief](#) in *FTC v. Wyndham* supporting the FTC's authority to regulate data security. Filed on behalf of the Electronic Frontier Foundation and the Center for Democracy &

Technology, the brief highlighted why it is vital that the FTC regulate data security. On August 25, 2015, the U.S. Third Circuit Court of Appeals upheld the FTC's authority under the unfairness prong of Section 5 of the FTC Act.

Between April 2008 and January 2010, Wyndham suffered 3 major data breaches resulting in 619,000 payment card account numbers being compromised and more than \$10.6 million in fraudulent charges. As a result of Wyndham's inadequate data security practices, intruders were able to gain access to Wyndham's hotel computer network each time through substantially similar brute force attacks. Following an extensive investigation, the FTC brought suit alleging that Wyndham had failed to implement "reasonable and appropriate" data security measures thereby violating Section 5 of the FTC Act's prohibition on "unfair or deceptive acts or practices in or affecting commerce."

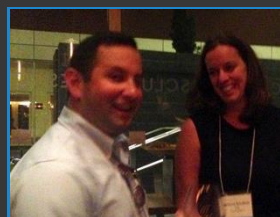
In response, Wyndham argued that the FTC lacked the authority to bring an unfairness claim involving data security. Secondly, Wyndham argued that the FTC had not provided adequate fair notice as to what constituted "reasonable and appropriate" data security standards. Wyndham contended that the FTC's previous data security complaints failed to give fair notice. Instead, Wyndham argued that in order to provide adequate notice, the FTC must formally promulgate rules and regulations regarding data security practices.

The Third Circuit had little trouble rejecting these arguments, holding that the FTC had sufficient flexibility and authority under the FTC Act to regulate data security practices. The Third Circuit also struck down Wyndham's argument that the FTC's previous data security complaints failed to provide adequate notice as to what constituted reasonable data security practices.

## SLTPPC Alumni Happy Hour

Over 30 SLTPPC alumni gathered at the San Francisco Press Club this fall to reunite with fellow SLTPPC alums, reminisce about their time in the clinic, share updates, and offer words of wisdom to current SLTPPC students. We were happy to show off our current students and to hear about the good work our alumni are doing in the law and technology space.

We are especially thankful for the enthusiasm alumni expressed for supporting the SLTPPC community. We look forward to more opportunities to connect!



# Alumni Updates

## Class of 2006

### David Yang

David recently made a big life change by leaving the world of biglaw and joining a small boutique, soon to be renamed Walker Stevens Cannom & Yang LLP. He focuses on commercial and patent litigation and general business counseling. His wife, Yungsohn Park (2005), is Special Assistant to the California Labor Commissioner. Their favorite thing to do is to be with their two children. Their second favorite thing to do is to be away from their two children.

## Class of 2007

### Dov Greenbaum



Formerly an IP litigator and a patent attorney, Dov now directs the Zvi Meitar Institute for the Legal Implications of Emerging Technologies. The

Institute is part of the Radzyner Law School at the Interdisciplinary Center (IDC), Herzliya Israel. Currently in its second year, the Institute is broadly interested in the ethical, legal, and social implications of new and emerging technologies in the areas of hi-tech, biotech, and cleantech.

## Class of 2008

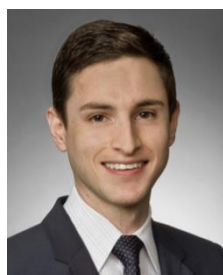
### Elvin Lee



Elvin is very excited to share that he has joined the legal department at Mozilla Corporation and is working to further their mission of promoting the Open Web!

## Class of 2009

### Robert Esposito



Robert is primarily an intellectual property litigator, focusing on patent. He joined Morrison & Foerster LLP in San Francisco earlier this year and was previously at Bryan Cave LLP San Francisco for five years. He also serves on the board of directors of the Digital Game Museum in Santa Clara and the AIDS Legal Referral Panel (ALRP) in San Francisco.

### Kathleen Lu

Kathleen is an associate at Fenwick & West LLP in the San Francisco office working on copyright, trademark, Internet, and technology litigation matters. She married Scott Cockrell in 2011 at a wedding officiated by another SLTPPC alum, Tom Kearney (thereby launching his side career as an officiant), and has a cute little house in Berkeley with a prolific blackberry bush. She also helps coach the intercollegiate racquetball club and team at UC-Berkeley.



## Class of 2012

### Jared Friend



After a couple years at Cooley LLP focusing on privacy and open source software issues, Jared transitioned into a new public interest role as Director of the Technology and Liberty Program at the ACLU of Washington. Jared's focus is on government surveillance and free speech concerns and he works across the board on ACLU-WA's litigation, legislation, and policy development projects.

## Class of 2015

### Mark Gray

Mark just started working at Quinn Emanuel in their Redwood City office. He is currently working on several copyright and patents cases, two of which have trials scheduled in the next year. He has ramped up quickly since starting work, but he is very excited to finally be out in the real world. Also, Mark's bar trip was spent entirely in Taiwan. It was delicious.

### Libby Hadzima Perkins (JD/MBA)

After graduating and taking the bar this summer, Libby had a chance to do some great travel before starting work—a belated honeymoon cycling in Holland and Belgium, hiking in Albania and Montenegro, and eating in Turkey. Libby recently joined the business and finance practice at Cooley LLP in San Francisco where she will be working with emerging companies.

### Jonathan Unikowski



Jonathan graduated from Berkeley Law's LL.M. program in May. During his LL.M., he fell in love with California and particularly one of its natives. He is currently a Legal

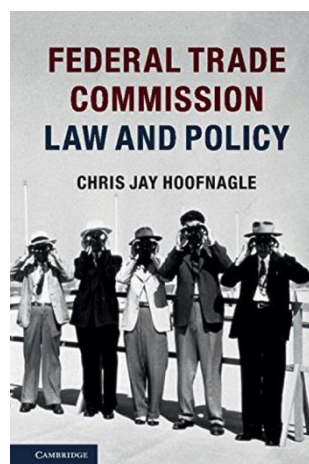
Fellow at the Wikimedia Foundation in San Francisco. At the Wikimedia Foundation, he works on global privacy, intellectual property, and Internet intermediary liability issues.



## Faculty Updates

**Catherine Crump** traveled to Germany to present at Chaos Communication Camp, a gathering of thousands of hackers that takes place once every four years. Her lecture, [Mainstream Policing Meets Military-Grade Surveillance](#), discussed the sophisticated surveillance equipment increasingly available in even small local police departments in the United States.

**Jennifer Urban** and Joe Karaganis published a preview of their work on notice and takedown in the *Communications of the ACM*. [The Rise of the Robo Notice](#) examines the use of automated systems to send copyright-related takedown requests and the subsequent divergence in online service providers' notice-handling practices.



The Federal Trade Commission, a US agency created in 1914 to police the problem of 'bigness,' has evolved into the most important regulator of information privacy in the world. Its policies profoundly affect business practices and serve to regulate most of the consumer economy. **Chris Hoofnagle's** new book, [Federal Trade Commission Privacy Law and Policy](#), canvasses the FTC's consumer protection efforts and links its century-long history of regulating advertising to its modern mission to police privacy.

**Brianna Schofield** participated in a roundtable discussion in Silicon Valley earlier this month as a part of the House Judiciary Committee's listening tour. The discussion, a part of the Committee's comprehensive review of copyright law, focused on changes that are needed to ensure that U.S. [CC-BY](#) EFF Photos copyright law works well in the digital age.



Congratulations to former SLTPPC Co-Director **Jason Schultz** for joining the White House Office of Science and Technology Policy where he is serving as [senior advisor on intellectual property and innovation](#) to the US chief technology officer.



**Jennifer Urban** and **Brianna Schofield** released a paper that examines academic libraries' interaction with both Digital Millennium Copyright Act (DMCA) and non-DMCA takedown notices. [Takedown and Today's Academic Digital Library](#) traces the recent experience of academic libraries that have received DMCA takedown notices targeting material in their open access repositories and discusses why norms and practices have not yet developed to address these requests. The paper suggests steps that libraries, publishers, and authors can take to best manage copyright conflicts while supporting libraries' missions to preserve and provide access to knowledge.

**Chris Hoofnagle**, together with 15 information privacy scholars, submitted a brief to the Supreme Court of the United States in *Spokeo, Inc. v. Robins*. [The brief](#) argues that in enacting the Fair Credit Reporting Act (FCRA), Congress crafted a bargain between data-aggregating businesses and the public: if those businesses limited disclosures and made reasonable efforts to adhere to practices ensuring "maximum possible accuracy," they would enjoy a safe harbor from litigation under many other state and federal theories. Spokeo's claim that consumers cannot pursue it for its violations of the FCRA would unravel that bargain, preserving consumer reporting agencies' broad immunity from suit while diminishing incentives to handle data fairly.

The [Defensive Patent License](#), a legal mechanism launched by **Jennifer Urban** and **Jason Schultz** to help protect innovation, was selected as the subject of a [Legal Design Jam](#) in San Diego this past summer. Led by Stefania Passera, the Legal Design Jam brought together a group of individuals from different fields—including designers, lawyers, innovators, and business people—who shared ideas for user-centric makeovers for the DPL.

