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ENGELBERG
C E N T E R
ON INNOVATION LAW & POLICY

2017



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ABOUT THE ENGELBERG CENTER

The Engelberg Center provides a unique environment where scholars can examine the law and policy that best support innovation. Over the years, the Engelberg Center has fostered interdisciplinary and collaborative research on innovation law and policy. In doing so, the Center has attracted legal scholars and practitioners, government officials, economists, physical scientists, engineers, historians, industry experts, and others who study, theoretically and empirically, the incentives that motivate innovators, how those incentives vary among different types of creative endeavor, and the laws and policies that help or hinder them. The Engelberg Center facilitates programming, publications, and other interactions that refine our understanding of the legal and policy implications of this research and that communicate those implications to stakeholders and decision makers, both nationally and internationally.

In addition to the world-class faculty and scholars it attracts, the Engelberg Center draws on the diversity of New York City, which is a center for creativity in advertising, art, cuisine, entertainment, fashion, financial services, graphic design, law, life sciences, literature, marketing, music, and technology, among other fields. We seek to enhance the ecosystem that supports close connections between IP scholars and the innovator community in and around the city.

Alfred B. Engelberg '65 generously endowed the Engelberg Center on Innovation Law & Policy in 1994. He enjoyed an unusually varied career in the field of intellectual property, having served as a patent examiner, a patent agent, a patent attorney in the Department of Justice, a member of a law firm, a representative for the generic pharmaceutical industry, and a principal negotiator during the legislative process that led to the Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act").

FACULTY CO-DIRECTORS



BARTON BEEBE

John M. Desmarais Professor of Intellectual Property Law

Barton Beebe specializes in the doctrinal, empirical, and cultural analysis of intellectual property law. He has been the Anne Urowsky Visiting Professor of Law at Yale Law School, a visiting professor of law at Stanford Law School, and a Visiting Research Fellow at Merton College, Oxford. He has also taught courses at Hebrew University, Jerusalem, the Centre d'Études Internationales de la Propriété Intellectuelle at the Université de Strasbourg, the Munich Intellectual Property Law Center, the State Intellectual Property Office of the People's Republic of China, and the Hanken School of Economics in Helsinki, Finland. He is the author of *Trademark Law: An Open-Source Casebook*, which is a free online trademark casebook now in use in over 30 law schools. Professor Beebe received his JD from Yale Law School, his PhD in English Literature from Princeton University, and his BA from the University of Chicago. He clerked for Judge Denise Cote of the United States District Court for the Southern District of New York.

Recent Publications

"Is Trademark Dilution a Unicorn? An Experimental Investigation" (forthcoming) (with Roy Germano, Christopher Sprigman, and Joel Steckel)

Design Protection Law, in *The Oxford Handbook of Intellectual Property Law* (Rochelle Dreyfuss and Justine Pila, eds., Oxford University Press, forthcoming)

Empirical Studies of Trademark Law, in *Research Handbook on the Economics of Intellectual Property Law: Volume II. Analytical Methods* (Peter Menell and David Schwartz, eds., forthcoming)

"Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion," 131 *Harvard Law Review* (forthcoming 2018) (with Jeanne Fromer)

"The Scope of Strong Marks: Should Trademark Law Protect the Strong More than the Weak?" 92 *New York University Law Review* (forthcoming 2017) (with Scott Hemphill)

Trademark Law: An Open-Source Casebook v. 4.0 (2017)

"Bleistein, the Problem of Aesthetic Progress, and the Making of American Copyright Law," 117 *Columbia Law Review* 319 (2017)

Comment to PTO on Possible Streamlined Version of Cancellation Proceedings on Grounds of Abandonment and Nonuse (Aug. 14, 2017) (with Jeanne Fromer)



ROCHELLE DREYFUSS

Pauline Newman Professor of Law; Co-Director, Competition, Innovation, and Information Law Program

A trained research chemist, Rochelle Cooper Dreyfuss focuses her research and writing on the intersection between patents and science and examines the implications of technological change on patent law and policy. Her other interests include procedural issues arising in intellectual property litigation, particularly in the international context. After graduating from Columbia Law School, she clerked for Chief Judge Wilfred Feinberg (Second Circuit) and Chief Justice Warren Burger (US Supreme Court). A member of the American Law Institute, Professor Dreyfuss was the Reporter for its Project on Intellectual Property and is currently an adviser on its Restatement Third of Conflicts of Laws project. She has been a consultant to the Federal Courts Study Committee, the Presidential Commission on Catastrophic Nuclear Accidents, and the Federal Trade Commission. She has served on committees of the National Academy of Science and the Department of Health & Human Services, as well as on BNA's Advisory Board to USPQ. She is a past chair of the Intellectual Property Committee of the American Association of Law Schools. In addition to articles in her specialty areas, Professor Dreyfuss has co-authored books on intellectual property law and international intellectual property law.

Recent Publications

"On Aiding Technological Development: The Max Planck Declaration on Patent Protection," *University of California Irvine Law Review* (forthcoming) (with Esteban Donoso)

Introduction, in *The Oxford Handbook of Intellectual Property Law* (Rochelle C. Dreyfuss & Justine Pila, eds., Oxford University Press, forthcoming) (with Justine Pila)

Should the Patent and Trademark Office Be Allowed to Change Its Mind? (http://www.slate.com/articles/technology/future_tense/2017/06/)

"The EU's Romance with Specialized Adjudication," *International Review of Intellectual Property and Competition Law* (2016)

Enforcing Intellectual Property Claims Globally When Rights Are Defined Territorially, in *The Internet and the Emerging Importance of New Forms of Intellectual Property* (Susy Frankel and Daniel Gervais, eds., Kluwer Law International, 2016)

"Economic Espionage as Reality or Rhetoric: Equating Trade Secrecy with National Security," 20 *Lewis & Clark Law Review* 419 (2016) (with Orly Lobel)

Entre la salud y las patentes: la disputa por la propiedad intelectual y el acceso a los medicamentos en América Latina (ed. with César Rodríguez-Garavito, Universidad de los Andes, 2016)

Constructing an International Property Acquis for the Agricultural Sciences, in *The Intellectual Property-Regulatory Complex: Overcoming Barriers to Innovation in Agricultural Genomics* 211 (Emily Marden et al., eds., UBC Press, 2016)

Patents and Human Rights: The Paradox Re-Examined, in 3 *Intellectual Property and Access to Science and Culture: Conflict or Convergence?* 54 (Christophe Geiger, ed., ICTSD/CEIPI, 2016)



JEANNE FROMER

Professor of Law

Jeanne Fromer specializes in intellectual property, including copyright, patent, trademark, trade secret, and design protection laws. In 2011, she was awarded the American Law Institute's inaugural Young Scholars Medal for her scholarship in intellectual property. Professor Fromer was a visiting professor at Harvard Law School and also previously taught at Fordham Law School. She was a law clerk to Justice David H. Souter (US Supreme Court) and Judge Robert D. Sack (Second Circuit). After working at Hale and Dorr LLP (now WilmerHale) in intellectual property, she was an Alexander Fellow with the NYU School of Law and a Resident Fellow with Yale Law School's Information Society Project. She earned her BA summa cum laude in Computer Science from Barnard College and her SM in Electrical Engineering and Computer Science from MIT for research in artificial intelligence and computational linguistics, and worked at AT&T (Bell) Laboratories in those same areas. She received her JD magna cum laude from Harvard Law School, serving as Articles and Commentaries Editor of the Harvard Law Review and Editor of the Harvard Journal of Law and Technology.

Recent Publications

"Taking Intellectual Property into Their Own Hands" (forthcoming) (with Amy Adler)

"Claiming Design" (forthcoming) (with Mark McKenna)

"A Theory of Legal Protection for Industrial Design" (forthcoming) (with Christopher Sprigman)

"Trademark Distinctiveness" (forthcoming)

"Are We Running Out of Trademarks? An Empirical Study of Trademark Depletion and Congestion," 131 *Harvard Law Review* (forthcoming 2018) (with Barton Beebe)

"Forgetting Functionality," 166 *University of Pennsylvania Law Review Online* (forthcoming 2017) (with Christopher Buccafusco)

"Fashion's Function in Intellectual Property Law," 93 *Notre Dame Law Review* (forthcoming 2017) (with Christopher Buccafusco)

Comment to United States Patent & Trademark Office on Possible Streamlined Version of Cancellation Proceedings on Grounds of Abandonment and Nonuse (Aug. 14, 2017) (with Barton Beebe)

"The Unregulated Certification Mark(et)," 69 *Stanford Law Review* 121 (2017)

"Dynamic Patent Disclosure," 69 *Vanderbilt Law Review* 1715 (2016)

United States Supreme Court, Brief of Professors Christopher Buccafusco and Jeanne Fromer as Amici Curiae in Support of Petitioner, in *Star Athletica, LLC v. Varsity Brands, Inc.*, No. 15-866 (with Christopher Buccafusco, Meir Feder, and Matthew J. Silveira) (2016)



SCOTT HEMPHILL

Professor of Law

Scott Hemphill teaches and writes about antitrust, intellectual property, and regulation of industry. He holds a JD and PhD in economics from Stanford, an AB from Harvard, and an MS in economics from the London School of Economics, where he studied as a Fulbright Scholar. He served as Antitrust Bureau Chief for the New York Attorney General and clerked for Judge Richard Posner on the US Court of Appeals for the Seventh Circuit, and Justice Antonin Scalia on the United States Supreme Court. Hemphill joined NYU from Columbia Law School, where he was a professor of law. Hemphill's research focuses on the law and economics of competition and innovation. His scholarship ranges broadly, from drug patents to net neutrality to fashion and intellectual property. Recent work examines the antitrust problem of parallel exclusion in concentrated industries and anticompetitive settlements of patent litigation by drug makers. His scholarship has been cited by the United States Supreme Court and California Supreme Court, among others, and formed the basis for congressional testimony on matters of regulatory policy. His writing has appeared in law reviews, peer-reviewed journals, and the popular press, including the *Yale Law Journal*, *Science*, and the *Wall Street Journal*.

Recent Publications

IP and Competition Law, in *The Oxford Handbook of Intellectual Property Law* (Rochelle C. Dreyfuss and Justine Pila, eds., Oxford University Press, forthcoming)

"The Scope of Strong Marks: Should Trademark Law Protect the Strong More than the Weak?" 92 *New York University Law Review* (forthcoming 2017) (with Barton Beebe)

"Less Restrictive Alternatives in Antitrust Law," 116 *Columbia Law Review* 927 (2016)

United States Supreme Court, Brief of Professors Jeannie Suk Gersen and C. Scott Hemphill as Amici Curiae in Support of Respondents, in *Star Athletica, LLC v. Varsity Brands, Inc.*, No. 15-866 (2016)



JASON SCHULTZ

Professor of Clinical Law

Jason M. Schultz is a Professor of Clinical Law and Director of NYU's Technology Law & Policy Clinic. His clinical projects, research, and writing primarily focus on the ongoing struggles to balance intellectual property and privacy law with the public interest in free expression, access to knowledge, and innovation in light of new technologies and the challenges they pose.

Prior to joining NYU, Professor Schultz was an Assistant Clinical Professor of Law and Director of the Samuelson Law, Technology & Public Policy Clinic at the UC Berkeley School of Law (Boalt Hall). Before joining Boalt Hall, he was a Senior Staff Attorney at the Electronic Frontier Foundation (EFF), one of the leading digital rights groups in the world, and before that practiced intellectual property law at the firm of Fish & Richardson, PC. He also served as a clerk to the Honorable D. Lowell Jensen of the Northern District of California.

He is a member of the American Law Institute and was recently on leave to serve as Senior Advisor to United States Chief Technology Officer Megan Smith in the White House Office of Science and Technology Policy.

Recent Publications

Is Patent Reform via Private Ordering Anticompetitive? An Analysis of Open Patent Agreements, in *Patent Pledges: Global Perspectives on Patent Law's Private Ordering Frontier* 151 (Jorge L. Contreras and Meredith Jacob, eds., Edward Elgar Publishing, 2017)

"The Internet of Things We Don't Own?," *Communications of the ACM (ACM/New York, N.Y.)*, May 2016, at 36

The End of Ownership: Personal Property in the Digital Economy (MIT Press, 2016) (with Aaron Perzanowski)

Digital Copyright Exhaustion and Personal Property, in *Research Handbook on Intellectual Property Exhaustion and Parallel Imports* 518 (Irene Calboli and Edward Lee, eds., Edward Elgar Publishing, 2016) (with Aaron Perzanowski)



CHRISTOPHER SPRIGMAN

Professor of Law

Chris Sprigman teaches intellectual property law, antitrust law, competition policy, and comparative constitutional law. His scholarship focuses on how legal rules affect innovation and the deployment of new technologies. He is the author of numerous articles both in law reviews and in the popular press, as well as a book, *The Knockoff Economy: How Imitation Sparks Innovation* (Oxford 2012), co-authored with Kal Raustiala of the UCLA School of Law. He also serves as the Reporter for the American Law Institute's Restatement of Law: Copyright. Sprigman received his BA with honors from the University of Pennsylvania in 1988. He attended the University of Chicago Law School, serving as a comment editor of the University of Chicago Law Review and graduating with honors in 1993. Following graduation, Sprigman clerked for Judge Stephen Reinhardt of the US Court of Appeals for the Ninth Circuit, and for Justice Lourens H. W. Ackermann of the Constitutional Court of South Africa. Sprigman also taught at the law school of the University of the Witwatersrand, in Johannesburg, South Africa. From 1999 to 2001, Sprigman served as appellate counsel in the Antitrust Division of the US Department of Justice, where he worked on *US v. Microsoft*, among other matters. Sprigman then joined the Washington, D.C., office of King & Spalding, where he was elected a partner. In 2003, he left law practice to become a Residential Fellow at the Center for Internet and Society at Stanford Law School. He joined the University of Virginia faculty in 2005, and moved from UVA to NYU School of Law in 2013.

Recent Publications

"A Theory of Legal Protection for Industrial Design" (forthcoming) (with Jeanne Fromer)

"Is Trademark Dilution a Unicorn? An Experimental Investigation" (forthcoming) (with Barton Beebe, Roy Germano, and Joel Steckel)

"Innovate or Borrow? A Model for Regulating Sequential Innovation" (forthcoming in *William & Mary Law Review*) (with Christopher Buccafusco and Stefan Bechtold)

Experiments in Intellectual Property, in *Research Handbook on the Economics of Intellectual Property Law (Vol. II – Analytical Methods)* (Peter Menell and David Schwartz, eds., Edward Elgar Publishing, forthcoming) (with Christopher Buccafusco)

When are IP Rights Necessary? Evidence from Innovation in IP's Negative Space, in *Research Handbook on the Economics of Intellectual Property Law (Vol. I – Theory)* (Peter Menell and Ben Depoorter, eds., Edward Elgar Publishing, forthcoming) (with Kal Raustiala)

"What's In, and What's Out: How IP's Boundary Rules Shape Innovation," 30 *Harvard Journal of Law and Technology* 491 (2017) (with Mark McKenna)

Conclusion: Some Positive Thoughts About IP's Negative Space, in *Creativity Without Law: Challenging the Assumptions of Intellectual Property* 249 (Kate Darling and Aaron Perzanowski, eds., New York University Press, 2017)

"Innovation Heuristics: Experiments on Sequential Creativity in Intellectual Property," 91 *Indiana Law Journal* 1251 (2016) (with Christopher Buccafusco and Stefan Bechtold)

The Indigo Book: A Manual of Legal Citation (Public.Resource.Org, Inc., 2016)

United States Supreme Court, Brief of Amicus Curiae on Behalf of Intellectual Property Professors in Support of Petitioner, in *Star Athletica, LLC v. Varsity Brands, Inc.*, No. 15-866 (with Mark Lemley, Mark McKenna, and Rebecca Tushnet) (2016)

United States Court of Appeals for the Second Circuit, Brief of Amicus Curiae Law Professors in Support of Defendant-Appellee, in *Louis Vuitton Malletier, S.A., v. My Other Bag, Inc.*, No. 16-0241 (with Rebecca Tushnet) (2016)

United States Court of Appeals for the Second Circuit, Brief of Amicus Curiae Professors of Intellectual Property Law in Support of Appellant/Cross-Appellee, in *Fox News Network, LLC, v. TVEyes Inc.*, No. 15-3885 (with Michael Scott Leavy and Rebecca Tushnet) (2016)



KATHERINE STRANDBURG

Alfred E. Engelberg Professor of Law

Katherine Strandburg concentrates her teaching and research in the areas of patent law and innovation policy and information privacy law. Her scholarship considers how the law in these areas should reflect the importance of collaboration and social interactions and respond to technological change. Her legal analysis is informed by studies of user innovation and of knowledge commons governance.

Professor Strandburg obtained her law degree from the University of Chicago Law School with high honors in 1995 and served as a law clerk to the Honorable Richard D. Cudahy of the US Court of Appeals for the Seventh Circuit. She is an experienced litigator, is licensed to practice before the United States Patent and Trademark Office, and has authored several amicus briefs to the Supreme Court and federal appellate courts dealing with patent law and privacy issues.

Prior to her legal career, Professor Strandburg was a research physicist at Argonne National Laboratory, having received her PhD from Cornell University in 1984 and conducted postdoctoral research at Carnegie Mellon. She was a visiting faculty member of the physics department at Northwestern University from 1990 to 1992.

Recent Publications

Governing Medical Commons (ed. with Brett M. Frischmann and Michael J. Madison, Cambridge University Press, forthcoming)

Users, Patents and Innovation Policy, in *The Oxford Handbook of Intellectual Property Law* (Rochelle C. Dreyfuss & Justine Pila, eds., Oxford University Press, forthcoming)

Derogatory to Professional Character? The Evolution of Physician Anti-Patenting Norms, in *Creativity Without Law: Challenging the Assumptions of Intellectual Property* 63 (Kate Darling and Aaron Perzanowski, eds., New York University Press, 2017)

"Panel 2: Liability Issues and 3D Printing," 34 *Cardozo Arts & Entertainment Law Journal* 32 (2016) (with Mark Bartholomew, et al.)

Intellectual Property at the Boundary, in *Revolutionizing Innovation: Users, Communities, and Open Innovation* 235 (Karim Lakhani and Dietmar Harhoff, eds., MIT Press, 2016)

ENGELBERG CENTER STAFF



ANNE HASSETT
Executive Director

Anne Hassett joined the Engelberg Center following a distinguished 30-year career as a trial lawyer in complex business litigation, in particular intellectual property litigation. Anne most recently was a senior partner in the patent litigation practice at Goodwin Procter LLP and previously was a partner in the intellectual property practice at Kirkland & Ellis LLP. Anne received her BS summa cum laude in chemistry from SUNY Albany, AM in chemistry from Harvard University, and JD cum laude from U.C. Hastings College of the Law. Anne was Editor-in-Chief of the *Hastings Law Review* and named to the Order of the Coif and the Thurston Society. She is currently the President of the New York Intellectual Property Law Association (NYIPLA), works closely with NYIPLA's Legislative Action Committee, and is a member of the Honorable William C. Conner Inn of Court. Anne is Of Counsel to Amster, Rothstein & Ebenstein LLP. She is also a research scholar at NYU School of Law, with a particular interest in how diversity enhances innovation. Anne has an adjunct faculty appointment at NYU School of Law and co-taught Life Sciences Patent Law in Spring 2017.



NICOLE ARZT
Program Coordinator

Nicole Arzt has overseen the daily operations of the Engelberg Center on Innovation Law & Policy since 2000 and coordinates the Center's various programs. Nicole recently received NYU's Give-A-Violet award, which annually recognizes NYU staff who perform above and beyond the normal scope of their responsibilities. She holds a BA in Fashion Merchandising with a minor in business from the University of Maryland.

ENGELBERG CENTER FACULTY TALKS

OCTOBER 14

Barton Beebe and Scott Hemphill
NYU School of Law

The Scope of Strong Marks: Should Trademark Law Protect the Strong More than the Weak?

OCTOBER 27

Dr. Barbara Lauriat
Kings College London, The Dickson Poon School of Law
The Implications and Challenges of Arbitrating International Intellectual Property Disputes

NOVEMBER 18

Jeanne Fromer
NYU School of Law
Claiming Design (with Mark McKenna)

NOVEMBER 29

Jessica Silbey
Northeastern University School of Law
The Art and Business of Photography in the Digital Age (with Peter DiCola and Eva Subotnik)

DECEMBER 8

David Abrams
University of Pennsylvania Law School and
The Wharton School
The Patent Troll: Benign Middleman or Stick-up Artist?

MAY 5

Amanda Levendowski
NYU School of Law
How Copyright Law (Un)Biases Artificial Intelligence

MAY 22

Alexander Peukert
Engelberg Center Distinguished Visiting Scholar in
Residence; Goethe University Frankfurt am Main
Rethinking the Ontology of IP

AFFILIATED FACULTY



AMY ADLER

Emily Kempin Professor of Law

A leading scholar of art law, Amy Adler specializes in the legal regulation of artistic expression, sexuality, and free speech.



JANE ANDERSON

Assistant Professor of Anthropology and Museum Studies, NYU

Jane Anderson's research focuses on the intersection of indigenous knowledge with intellectual property law and the complicated legal and social justice problems that this intersection presents. She is also an expert consultant for the World Intellectual Property Organization on a number of policy proposals for the protection of traditional knowledge and cultural expressions.



RICHARD EPSTEIN

Laurence A. Tisch Professor of Law

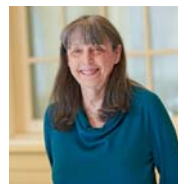
Considered one of the most influential thinkers in legal academia, Richard Epstein is known for his research and writings on a broad range of constitutional, economic, historical, and philosophical subjects.



HARRY FIRST

Charles L. Denison Professor of Law

Harry First is Co-Director of the Competition, Innovation, and Information Law Program and a specialist in antitrust and business crime. First's scholarly work has focused on various aspects of antitrust enforcement and theory.



ELEANOR FOX

Walter J. Derenberg Professor of Trade Regulation

Eleanor Fox LLB '61 is a prominent antitrust and comparative competition law scholar. Her recent work includes articles on antitrust, markets, developing countries, and global governance, and casebooks on US antitrust law and European Union law.



DEEPAK HEGDE

Associate Professor of Management and Organizations, NYU Stern School of Business

Deepak Hegde's research focuses on the unique challenges posed by innovation to business strategy and public policy (principally the production and commercialization of new ideas). He studies high-tech industries including biomedical and information and communication technologies.



MYLES JACKSON

Gallatin Research Excellence Professor, NYU Gallatin School of Individualized Study

In addition to being the Gallatin Research Excellence Professor of the History of Science at NYU Gallatin, Myles Jackson is a Professor of History of the Faculty of Arts and Science at NYU, as well as a professor in the Division of Medical Bioethics at the NYU-Langone School of Medicine. He is currently working on a popular book on the relationship between science, technology, and music from the 18th century to the present, as well as continuing to conduct research on gene patenting and privacy issues in Europe.



DANIEL KEVLES

Interdisciplinary Fellow, NYU School of Law; Stanley Woodward Professor Emeritus of History, History of Medicine & American Studies, Yale University; Adjunct Professor, Yale Law School

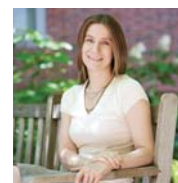
Daniel Kevles' research and writing encompass the interplay of science, technology, and society past and present with a focus on the United States. His particular research interests include the history of physics, biology, scientific fraud and misconduct, plant and animal breeding, biotechnology, intellectual property, and science, arms, and the state.



HILA LIFSHITZ-ASSAF

Assistant Professor of Information, Operations and Management Sciences, NYU Stern School of Business

Hila Lifshitz-Assaf's research focuses on developing an in-depth empirical and theoretical understanding of the micro-foundations of scientific and technological innovation and knowledge creation processes in the digital age. She investigates new organizational forms for the production of scientific and technological innovation such as crowdsourcing, open source, open online innovation communities, Wikipedia, hackathons, and makeathons.



FLORENCIA MAROTTA-WURGLER

Professor of Law

Florencia Marotta-Wurgler '01 is an expert in online and standard form contracting. Her research has addressed online standard form contracting with delayed disclosure, contracting in the presence of seller market power, and dispute resolution clauses. She is currently working on a large empirical project on consumer privacy policies online and on the effectiveness of the Federal Trade Commission's privacy enforcement actions.



ARTHUR MILLER

Arthur Miller, CBE, is one of the nation's most distinguished legal scholars in the areas of civil litigation, copyright, unfair competition, and privacy. A renowned commentator on law and society, he won an Emmy for his work on PBS's *The Constitution: That Delicate Balance* and served for two decades as the legal editor for ABC's *Good Morning America*.



PETRA MOSER

Professor, NYU Stern School of Business

Professor Moser's research combines methods from empirical microeconomics and economic history to examine the determinants of creativity and innovation. She uses historical variation in patent and copyright laws to examine the effects of intellectual property on science, technological innovation, and artistic creativity.



JOEL STECKEL

Professor of Marketing, NYU Stern School of Business

Joel Steckel's primary research areas of interest include marketing research, marketing and branding strategy, approaches for one-to-one marketing, managerial decision processes, and methodologies for measuring consumer performance and behavior. Among other accomplishments, Professor Steckel was the founding president of the INFORMS Society for Marketing Science.



DIANE ZIMMERMAN

Samuel Tilden Professor of Law Emerita

An award-winning reporter for *Newsweek* and the *New York Daily News*, Diane Zimmerman joined the faculty of NYU School of Law in 1977. Her specialties include freedom of speech and press and intellectual property.

ADJUNCT FACULTY



JODI BALSAM
Associate Professor of
Clinical Law, Brooklyn Law
School



JUDITH GERMANO
Senior Fellow, NYU Center
on Law & Security



DOUGLAS HAND
Partner, Hand Baldachin
& Amburgey LLP



MICHAEL KASDAN
Partner, Wiggin and
Dana LLP



NASIR MEMON
Professor, NYU Tandon
School of Engineering



LEE BERKLEY ROWLAND
Staff Attorney, Speech,
Privacy & Technology
Project, American Civil
Liberties Union



DAVID H. BERNSTEIN
Partner, Debevoise &
Plimpton



ZACHARY GOLDMAN
Executive Director, NYU
Center on Law & Security



ANNE HASSETT
Executive Director, NYU
Engelberg Center on
Innovation Law & Policy



DAY KROLIK
Senior Vice-President
Labor Relations and Talent
Negotiations, NBCUniversal
(retired)



HELEN NISSENBAUM
Professor, Cornell Tech,
Information Science;
Professor, New York
University (on leave),
Media, Culture, and
Communication &
Computer Science



ROSE SCHWARTZ
Partner, Franklin,
Weinrib, Rudell &
Vassallo, PC



KIEL BRENNAN-MARQUEZ
Research Fellow, Information
Law Institute, NYU School
of Law



NICHOLAS GORDON
Partner, Franklin, Weinrib,
Rudell & Vassallo, PC



VINAY JAIN
Vice President and
Senior Counsel for
Technology & IP,
American Express
Global Business Travel



AMANDA LEVENDOWSKI
Clinical Teaching Fellow,
NYU Law Technology
Law & Policy Clinic;
Affiliate Researcher, NYU
Information Law Institute



JEFFREY PARNASS
Vice President &
Assistant General
Counsel, News Corp
and Dow Jones



ERIC STONE
Partner, Paul, Weiss,
Rifkind, Wharton &
Garrison LLP



MITCH ENGLER
Professor of Law,
Cardozo Law School



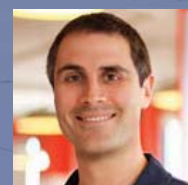
NICHOLAS GROOMBRIDGE
Partner, Paul, Weiss, Rifkind,
Wharton & Garrison LLP



GUILLERMO JIMENEZ
Professor, Fashion
Institute of Technology



DAVID McCRAW
Assistant General Counsel,
The New York Times



DAVID PASHMAN
General Counsel,
Meetup, Inc.



BRUCE WEXLER
Partner, Paul
Hastings LLP

VISITING SCHOLARS

2016–17



AMAN GEBRU
Post-Doctoral Global Fellow
Ethiopia

Aman Gebru's research interests are intellectual property, innovation, and development. He has taught intellectual property law (domestic and international), international investment law, and law and development at the University of Ontario Institute of Technology and Haramaya University. As a Post-Doctoral Global Fellow at NYU School of Law, Gebru researched and wrote *Challenges in the Intellectual Property Protection of Traditional Knowledge: Searching for Solutions Using Proprietary and Open-Innovation Concepts*.



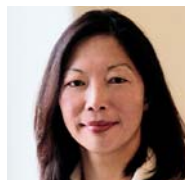
CHRISTOPHE GEIGER
Professor, Director General and Director of
the Research Department of the Centre for
International Intellectual Property Studies
(CEIP), University of Strasbourg

Christophe Geiger specializes in national, European, international, and comparative copyright and intellectual property law and acts as external expert for the European Parliament and the European Union Intellectual Property Office (EUIPO). Geiger was a Global Professor of Law at NYU School of Law in Spring 2017 and taught a seminar on Intellectual Property and Human Rights.



ADRIAN KUENZLER
Branco Weiss Fellow, Society in Science, Swiss
Federal Institute of Technology (ETH) Zurich

Adrian Kuenzler's scholarship draws on insights from the behavioral sciences to document the law's role in stimulating new innovation and economic growth. Kuenzler is interested in developing a novel set of responses to problems of consumer sovereignty within antitrust and intellectual property law. As a Post-Doctoral Global Fellow at NYU School of Law, Kuenzler conducted research on advertising and consumer sovereignty.



NARI LEE
Professor of Intellectual Property, Hanken School
of Economics, Finland

Nari Lee's research focuses on the interaction of law and technology. The topics of her recent publications include open innovation, pharmaceutical patents, and the governance of intellectual property in China and Europe. Her research project as a Senior Global Research Fellow at NYU School of Law focused on the interplay between disruptive innovation and intellectual property law, using 3D-printing technology as an example.



ARGYRI PANEZI
Post-Doctoral Global Fellow
Greece

Argyri Panezi studies the intersection of intellectual property law, technology, and access to knowledge. Panezi's research as a Post-Doctoral Global Fellow at NYU School of Law examined the impact of digitization on the future of public libraries and, specifically, their strategies to adapt to the digital era and provide access to a broader demographic.



ALEXANDER PEUKERT
Professor of Law, Goethe University Frankfurt
am Main

Alexander Peukert was a Distinguished Scholar in Residence affiliated with the Engelberg Center on Innovation Law & Policy. He is a professor of civil law and commercial law with a specific focus on international intellectual property law, and a particular research interest in intellectual property and unfair competition. Professor Peukert is also a Principal Investigator at Goethe University's Cluster of Excellence "The Formation of Normative Orders."

2017–18



SÉVERINE DUSOLLIER
Professor, Institut d'Etudes Politiques (Sciences Po Paris)

Séverine Dusollier's current research focuses on copyright, including changes of authorship models in contemporary art and in digital practices, focusing on open source and free licensing.



MARTIN SENFTLEBEN
Professor of Intellectual Property, Vrije Universiteit
Amsterdam Faculty of Law

Martin Senftleben specializes in intellectual property law and information law. His current research activities concern cultural aspects of the protection of intellectual property, such as the influence of copyright law on individual and collaborative processes of creation, particularly in the participative web 2.0; the role of (well-known) trademarks and transnational trademark registration systems in the exchange of cultural values; the use of protection mechanisms of intellectual property law with regard to the preservation of traditional cultural expression; and the evolution of competition culture and the protection against unfair competition in former centrally planned economies.



THEODOSIA STAVROULAKI
PhD Researcher, Department of Law, European
University Institute

Theodosia Stavroulaki's main areas of expertise include EU competition law, health law and policy, law and economics. Her PhD research project, which is entitled *The Integration of Healthcare Quality Under a Competition Law Analysis: Current Challenges and Proposals for Further Development*, examines how and to what extent health care quality may be taken into account under EU competition law. Stavroulaki won a prize for the Best Paper in Law and Economics by the Greek Association of Law and Economics. She won an in-residence research fellowship from the American Bar Association in 2015.



ENGELBERG CENTER EVENTS

TRIAL BY JURY OF PATENT CASES

September 30, 2016

This conference assembled distinguished federal jurists, academics, and practitioners to discuss whether the 7th Amendment guarantees a right to a jury trial in patent cases and to analyze, in a series of presentations and roundtable discussions, current issues and trends in how patent jury trials are conducted. The **Honorable Kathleen O'Malley** (Circuit Judge, United States Court of Appeals for the Federal Circuit) delivered the keynote address.

Anne Hassett and **Steven Susman** (Civil Jury Project; Susman Godfrey) organized this conference, which included the following debates, presentations, and roundtables:

Update on “Rush to Judgment? Trial Length and Outcomes in Patent Cases”

Mark Lemley (Stanford Law School)



Scholars' Debate: Does the 7th Amendment Guarantee a Jury Trial in Patent Litigation?

Renée Lerner (George Washington University Law School)

James Oldham (Georgetown University Law Center)

Jeanne Fromer (moderator)

Judges Roundtable

Hon. William Conley, US District Court for the Western District of Wisconsin

Hon. Rodney Gilstrap, US District Court for the Eastern District of Texas

Hon. Leonard Stark, US District Court for the District of Delaware

Hon. William Young, US District Court for the District of Massachusetts

Scott Hemphill (moderator)



Summary of Patent Jury Trial Statistics

Margaret Diamond '16 (Engelberg Center Student Research Fellow)

Scholars Roundtable

Colleen Chien (Santa Clara University School of Law)

Mark Lemley (Stanford Law School)

David Schwartz (Northwestern Pritzker School of Law)

Rochelle Dreyfuss (moderator)

Practitioners Roundtable

Juanita Brooks (Fish & Richardson)

Douglas Cawley (McKool Smith)

John Desmarais (Desmarais LLP)

William Lee (WilmerHale)

Steve Susman (Susman Godfrey) (moderator)



2016 IP INSTITUTE

December 1, 2016

The 2016 IP Institute, co-hosted by the Engelberg Center and Cravath, Swaine & Moore LLP, brought together leading judges, scholars, business people, and lawyers in the field to discuss developments across a range of intellectual property topics. Professor **Rochelle Dreyfuss** and **David J. Kappos**, Partner, Cravath, Swaine & Moore LLP, organized the program.

The day-long event, which began with introductory remarks by the **Honorable Colleen McMahon** (US District Court for the Southern District of New York) and featured a demonstration of IBM's Watson technology, included the following presentations and panel discussions:

Keynote Address

Graham Moore, Author of *The Last Days of Night* and Academy Award-Winning Screenwriter of *The Imitation Game*

Legislative Perspectives—Agenda for Congress and the New Administration

Aaron Cooper, BSA|The Software Alliance; US Senate Judiciary Committee (former)

Noah Phillips, US Senate Judiciary Committee

David J. Kappos, Cravath, Swaine & Moore LLP (moderator)

The Antitrust/IP Interface

Scott Hemphill

GC Perspectives on IP

Michael D. Fricklas, Viacom

Horacio Gutierrez, Spotify

Donald J. Rosenberg, Qualcomm

David R. Marriott, Cravath, Swaine & Moore LLP (moderator)



Europe's New Patent Court and Patent System—Perspectives from European Experts

Tommaso Faelli, BonelliErede

Dr. Wolfgang Kellenter, Hengeler Mueller

Susie Middlemiss, Slaughter and May

Rochelle C. Dreyfuss (moderator)

Issues Towards Maturation of the US Post-Grant Review Process

Anne Hassett

Jeffrey N. Myers, Pfizer

James D. Smith, Ecolab; US Patent Trial and Appeal Board (former)

David R. Marriott, Cravath, Swaine & Moore LLP (moderator)

Mediation and Arbitration Perspectives from Presiding Judges

The Honorable Joseph J. Farnan, Jr., US District Court for the District of Delaware (Retired)

The Honorable Faith Hochberg, US District Court for the District of New Jersey (Retired)

The Honorable Paul R. Michel, US Court of Appeals for the Federal Circuit (Retired)

Karin A. DeMasi, Cravath, Swaine & Moore LLP (moderator)

Judicial Perspectives from Sitting Judges

The Honorable Raymond T. Chen, US Court of Appeals for the Federal Circuit

The Honorable Denise L. Cote, US District Court for the Southern District of New York

The Honorable Leonard P. Stark, US District Court for the District of Delaware

Evan R. Chesler, Cravath, Swaine & Moore LLP (moderator)



SEVENTH ANNUAL TRI-STATE REGION IP WORKSHOP

January 13, 2017

The 2017 Tri-State Region IP Workshop brought together intellectual property scholars (including professors, fellows, visitors, graduate students, and practitioners) from New York, New Jersey, Connecticut, and Philadelphia to present their works in progress for commentary in a workshop environment. The papers examined issues concerning patent law, copyright law, teaching intellectual property, and intellectual property theory.

Professors **Barton Beebe** and **Jeanne Fromer** organized the 2017 workshop, which featured the following articles, presenters, and commentators:

PATENT LAW I

Mark Patterson, Fordham University School of Law
Do Secret Patent Arbitration Awards Violate Antitrust Laws?
Commentator: Christopher Sprigman

David Abrams, University of Pennsylvania Law School and The Wharton School
Bhaven Sampat, Columbia University Mailman School of Public Health
Drug Patents and Real Value
Commentator: Amy Kapczynski, Yale Law School

COPYRIGHT LAW

Amy Adler, NYU School of Law
Should We Abolish Copyright for Visual Art?
Commentator: Eva Subotnik, St. John's University School of Law

Shyam Balganesh, University of Pennsylvania Law School
Copyright as Tortious Interference with a Market Prospect
Commentator: Christina Mulligan, Brooklyn Law School



TEACHING INTELLECTUAL PROPERTY

James Grimmelman, Cornell Tech and Cornell Law School
Excerpts from *Patterns of Information Law* course pack

INTELLECTUAL PROPERTY THEORY

Christopher Buccafusco, Benjamin N. Cardozo School of Law
Functionality Screens (with Mark Lemley, Stanford Law School)
Commentator: Irina Manta, Maurice A. Deane School of Law, Hofstra University

Jeremy Sheff, St. John's University School of Law
Excerpts from *Valuing Progress*
Commentator: Christopher Beauchamp, Brooklyn Law School

PATENT LAW II

Jonathan Ashtor, Skadden, Arps, Slate, Meagher & Flom LLP
Do Valid Patents Promote Progress?
Commentator: Michael Burstein, Cardozo School of Law and McKinsey

Janet Freilich, Fordham University School of Law
Patent Clutter
Commentator: Katherine Strandburg

THE CRISPR PATENT BATTLE: IMPLICATIONS FOR DOWNSTREAM INNOVATION AND COMMERCIALIZATION IN GENE EDITING

March 21, 2017

Four expert panelists discussed several issues raised by the recent patent interference ruling at the US Patent Trial and Appeal Board between two universities (the MIT- and Harvard-affiliated Broad Institute versus the University of California, Berkeley) concerning their respective patent claims to the gene editing technology CRISPR/Cas9. Our expert panelists explained the importance of the CRISPR technology, which was developed via federal research grants, and the patent litigation issues. In particular, they offered their perspectives on how the recent ruling may affect the short-term strategy of companies seeking to innovate using the CRISPR platform and the longer-term implications of the university patentees' CRISPR licensing strategies for downstream innovation using the CRISPR platform.

Anne Hassett organized the program and moderated the discussion among the panelists:

- **Abram Goldfinger** (Executive Director of the Office of Industrial Liaison at New York University)
- **Lisa Larrimore Ouellette** (Stanford Law School)
- **Jacob Sherkow** (New York Law School)
- **Bruce Wexler** (Partner, Chair of the Life Sciences Industry Practice Group, Paul Hastings)





PATENT LAW ESSENTIALS: WHAT SCIENTISTS, ENGINEERS, PHYSICIANS & ENTREPRENEURS NEED TO KNOW

March 25, 2017

The goal of this afternoon-long workshop was to help undergraduates, graduate students, post-docs, faculty, and alumni in science, engineering, medicine, business, and law appreciate the basics of US patent law as a guide to, among other things, when they should consult lawyers concerning their innovations. The Engelberg Center co-sponsored this program together with the NYU Entrepreneurial Institute and three student-run organizations at NYU School of Law: the NYU Intellectual Property & Entertainment Law Society; NYU Patent Law Reading Group; and the NYU Social Enterprise & Startup Law Group.



In addition to being co-sponsored by NYU School of Law student organizations, NYU School of Law students **Stephen M. Hou '17** and **Julian G. Pymonto '17**, both with engineering backgrounds, developed and taught this program. The workshop covered the basics of US patent law, including the patent application process, prosecution, litigation, and licensing. The program highlighted key issues that inventors should be aware of as they navigate the patenting process, discussed what recent developments in patent law mean for inventors, and drew examples ranging from the computer software to the pharmaceutical industries. The program was telecast live to NYU Abu Dhabi, Harvard University, the Massachusetts Institute of Technology, the Scripps Research Institute, and Stanford University.



ORACLE V. GOOGLE AND THE RISE OF THE API© DEAD

March 28, 2017

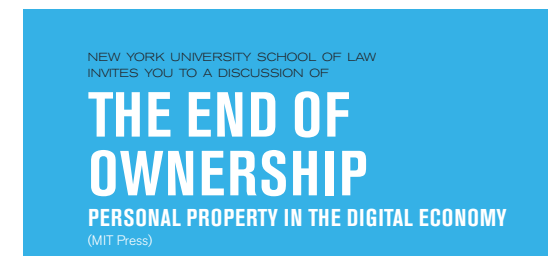
In an entertaining multimedia presentation, Peter S. Menell (UC Berkeley Law, Koret Professor of Law and Co-Director, Berkeley Center for Law & Technology) discussed the long-running IP litigation between Oracle and Google pending before the US Court of Appeals for the Federal Circuit. At issue in *Oracle v. Google* is whether Oracle can claim a copyright on Java APIs and, if so, whether Google infringes these copyrights. Professor **Christopher Sprigman** provided commentary.



JASON SCHULTZ BOOK TALK: THE END OF OWNERSHIP

April 4, 2017

In conversation with Professor **Katrina Wyman** (NYU School of Law), Professor **Jason Schultz** explained that he wrote the recently published book *The End of Ownership* (co-authored with Aaron Perzanowski) to focus attention on how the digital economy has changed traditional notions of ownership: “As technology has gotten more complex, and as the law has gotten more complex, there’s been a dramatic but gradual shift to a more ambiguous way of owning things—eventually to where we might never own anything. The shift in ownership in the digital economy has been happening behind the scenes, through deeply embedded digital device lockdowns and endless click-through licensing agreements that nobody—not even lawyers—pay attention to.” The book was published in October 2016, not long after Professor Schultz returned to campus from his service as a senior adviser on intellectual property and innovation in the White House Office of Science and Technology Policy.



INTERNATIONAL INTELLECTUAL PROPERTY LAW ROUNDTABLE

April 7-8, 2017

The Engelberg Center on Innovation Law & Policy hosted the 2017 International Intellectual Property Law Roundtable at NYU School of Law. Over two days, members of the Roundtable presented works in progress in a variety of fields, including international trademark law, trade secrecy law, and enforcement, as well as papers on topics at the intersection of intellectual property and development, human rights, and trade.

Professors **Rochelle Dreyfuss** and **Irene Calboli** (Texas A&M University School of Law) organized the conference, which featured the following presenters, papers, and moderators:

TRADEMARKS

Christine Farley, American University Washington College of Law
Reflections on Bayer v. Belmora

Martin Senftleben, Vrije Universiteit Amsterdam Faculty of Law
Extending Article 6ter of the Paris Convention to Signs with Cultural Significance—Nonsense or Necessity?

Lisa Ramsey, University of San Diego School of Law
Nontraditional Trademarks and Inherently Valuable Expression

Marketa Trimble, University of Nevada, Las Vegas, William S. Boyd School of Law

Territorialization of the Internet Domain Name System

Moderator: Barton Beebe

IP AND DEVELOPMENT I

Ruth Okediji, University of Minnesota Law School
International Copyright Limitations and Exceptions as Development Policy

Margo Bagley, Emory University School of Law
Illegal Designs? The Draft Design Law Treaty and Disclosure of Origin Requirements

Moderator: Aman Gebru, Hauser Global Post-Doctoral Fellow, NYU School of Law (2016-17)

IP AND DEVELOPMENT II

Margaret Chon, Seattle University School of Law
Trademark Goodwill as a Public Good: Brands and Corporate Social Responsibility

Jorge Contreras, S. J. Quinney College of Law, University of Utah
Working Theories: Rationalizing Global 'Use It or Lose It' Property Rules

Moderator: Katherine Strandburg

IP AND HUMAN RIGHTS

Molly Land, University of Connecticut School of Law
The Marrakesh Treaty and the Geography of Human Rights and Intellectual Property

Christophe Geiger, Hauser Global Professor of Law, NYU School of Law (Spring 2017); Centre for International Intellectual Property Studies (CEIPI), University of Strasbourg

Copyright as Private Censorship? How to Reconcile Free Artistic Creation with Copyright Law in an International and Regional Legal Context

Moderator: Christopher Sprigman

IP AND TRADE

Keith Maskus, University of Colorado at Boulder
Intellectual Property-Related Preferential Trade Agreements and the Composition of Trade

Irene Calboli, Texas A&M University School of Law
Exhaustion and Trade

Susy Frankel, Victoria University of Wellington, Faculty of Law
It's Raining Carrots: The Trajectory of Increased Intellectual Property Protection

Moderator: Anne Hassett

TRADE SECRETS

Sharon Sandeen, Mitchell Hamline School of Law
EU Trade Secrecy Directive

Nari Lee, Hauser Senior Global Research Fellow, NYU School of Law (2016-17); Hanken School of Economics, Finland
The Problematic Object and Purpose of Trade Secret Protection

Moderator: Rochelle Dreyfuss

ENFORCEMENT

Daniel Gervais, Vanderbilt University Law School
Reflections on Lilly v. Canada

Peter Yu, Texas A&M University School of Law
Crossfertilizing ISDS with TRIPS

Mary LaFrance, University of Nevada, Las Vegas, William S. Boyd School of Law

International Choice of Law and the Right of Publicity

Moderator: Irene Calboli, Texas A&M University School of Law





DESIGN2 CONFERENCE

May 11, 2017

At this day-long gathering co-hosted by the Engelberg Center and ETH Zurich, innovation and intellectual property scholars presented their works in progress for commentary in a workshop environment. The papers for review examined issues on a variety of topics concerning innovation and intellectual property protection in design. The program included keynote talks by design experts **Judy Yee** (Microsoft) and **Michael Bierut** (Pentagram). The conference concluded with a paper slam in which authors shared information and invited commentary on their works in early stages of development.

Professors **Chris Sprigman** and **Stefan Bechtold** (ETH Zurich) organized the conference. The presentations included the following speakers, papers, and commentators:



Jeanne Fromer, NYU School of Law
Mark McKenna, Notre Dame Law School
Claiming Design
 Commentator: Christopher Sprigman

Daniel Gross, Harvard Business School
Creativity Under Fire: The Effects of Competition on Creative Production
 Commentator: Christopher Buccafusco, Benjamin N. Cardozo School of Law

Bruce Tether, Manchester Business School, University of Manchester
Design Registration and the Failure to Protect Design Innovations: Reflections on Magmatic vs. PMS International
 Commentator: Stefan Bechtold, ETH Zurich

Pamela Samuelson, UC Berkeley Law
Exclusivity and Overlaps in Intellectual Property Regimes
 Commentator: Katherine Strandburg

Keynote Presentation by **Judy Yee**, Microsoft

Sarah Burstein, The University of Oklahoma College of Law
Partial Design
 Commentator: Barton Beebe

Keynote Presentation by **Michael Bierut**, Pentagram

Subramanian Balachander, UC Riverside School of Business
The Effects of a Product's Aesthetic Design on Demand and Marketing Mix Effectiveness: The Role of Segment Prototypicality and Brand Consistency
 Commentator: Joel Steckel, NYU Leonard Stern School of Business

PAPER SLAM

The Irony of Functionality Screening by **Christopher Buccafusco**, **Mark Lemley**, and **Jonathan Masur**
Qualitative Investigations of Design by **Mark McKenna** and **Jessica Silbey**
Furniture Design Protection and Innovation: EU vs. US by **Stefan Bechtold** and **Christopher Sprigman**





SELECTED OTHER EVENTS AT NYU SCHOOL OF LAW

NYU School of Law is home to a diverse range of academic centers, which often collaborate on an interdisciplinary approach to consideration of issues related to innovation. Here are a few recent examples:

COMPETITION AND GLOBALIZATION IN DEVELOPING ECONOMIES

October 28, 2016

Rapidly emerging economies are taking center stage in antitrust enforcement. This program considered the effect of global forces on developing countries' competition law systems and the impact on the behavior of entrepreneurs, consumers, and the world. The conference was co-organized by Professors **Harry First** and **Eleanor Fox '61**.

2017 ANNUAL SURVEY DEDICATION TO JUDGE PAULINE NEWMAN

February 21, 2017

The editorial staff of the *NYU Annual Survey of American Law* dedicated its 74th volume to **Pauline Newman '58**, Circuit Judge of the US Court of Appeals for the Federal Circuit. Among Judge Newman's colleagues and friends who spoke at the dedication were **Raymond Chen '94**, Circuit Judge of the US Court of Appeals for the Federal Circuit, and **Rochelle Dreyfuss**, Pauline Newman Professor of Law.

COPYRIGHTING FASHION AFTER VARSITY BRANDS

February 24, 2017

This event, organized by the *NYU Annual Survey of American Law*, discussed *Star Athletica, LLC v. Varsity Brands, Inc.*, the first Supreme Court case in decades that applied copyright law to fashion designs. The panelists explored the ramifications of the decision for scholars and the fashion industry. **Christopher Sprigman**, who co-authored one of the *amicus* briefs in the case, moderated the panel discussion.

A CONVERSATION WITH TWITTER GENERAL COUNSEL VIJAYA GADDE '00

March 22, 2017

Twitter users have the power to shape politics and culture, and with that come questions about online abuse, anonymity, government surveillance, fake news, and more. **Christopher Sprigman** discussed these topics with Twitter General Counsel Vijaya Gadde '00.

INTERNATIONAL WORKSHOP ON OBFUSCATION: SCIENCE, TECHNOLOGY, AND THEORY

April 7-8, 2017

Obfuscation strategies offer creative ways to evade surveillance, protect privacy, and improve security by adding, rather than concealing, data. This interdisciplinary workshop, sponsored by the NYU Information Law Institute, convened researchers, scientists, developers, and artists to discuss a broad range of technical, theoretical, and policy approaches to obfuscation, from tools that anonymize users' social media data to new methods for writing code itself. **Helen Nissenbaum** was a co-organizer of the workshop.

WHEN TRADEMARKS OFFEND

April 19, 2017

The Slants is an Asian-American band whose name was chosen to reappropriate a racial slur. Simon Tam, a social activist and frontman for the band, challenged the decision of the US Patent and Trademark Office denying registration of the band's name, citing the Lanham Act's prohibition on registration of any disparaging trademark. After a federal appeals court struck down that law on First Amendment grounds, the Supreme Court agreed to review Tam's case. This program, presented after the oral argument in the Supreme Court but before the Court's decision, considered, among other questions, whether disparaging marks used to sell football tickets and logo-bearing merchandise should be viewed through the same lens as those used by musicians who are members of the disparaged group trying to reclaim the slur and make a point. Simon Tam discussed the issues in a panel moderated by **Jeanne Fromer**.

ALGORITHMS AND EXPLAINABILITY SYMPOSIUM

April 27-28, 2017

Machine learning algorithms and similar data-driven approaches may enhance the accuracy and efficiency of decision-making processes, but the logic and rationale that underlie the ultimate decisions are opaque to human understanding. This symposium, organized by the NYU Information Law Institute and **Katherine Strandburg** and **Kiel Brennan-Marquez**, addressed whether decision makers who rely on such processes should be legally or ethically obligated to provide humanly meaningful explanations of individual decisions to those who are affected or to society at large.



HIGHLIGHTS OF 2017 EVENTS



Top row: Judge Pauline Newman's colleagues on the court and in the field of intellectual property and patent law, as well as several of her former clerks, honored her scholarship, eloquence, and work ethic at the *NYU Annual Survey of American Law* dedication.

Left: Simon Tam discussed the Supreme Court showdown regarding his trademark case with Jeanne Fromer just two months before the Court decided in his favor.

ENGELBERG CENTER FACULTY AND STUDENTS GO TO COURT

This year, Engelberg Center faculty offered their perspectives to courts in a series of amicus curiae briefs.

Design features of cheerleader uniforms were the topic of debate at the Supreme Court when it heard arguments in *Star Athletica, LLC v. Varsity Brands, Inc.* in October 2016. The case centered on whether Varsity Brands could copyright its uniform designs, and many believed it could help clarify a major issue for the fashion industry: the kinds of intellectual property protections that are available for its products. In a 6-2 decision in March 2017, the Court ruled in favor of Varsity Brands.

Jeanne Fromer, Scott Hemphill, and Chris Sprigman filed separate amicus briefs in the case, and each took a different perspective on the question.



- United States Supreme Court, Brief of Amicus Curiae on Behalf of Intellectual Property Professors in Support of Petitioner, in *Star Athletica, LLC v. Varsity Brands, Inc.*, No. 15-866 (**Chris Sprigman** with Mark Lemley, Mark McKenna, and Rebecca Tushnet) (2016)
- United States Supreme Court, Brief of Professors Christopher Buccafusco and **Jeanne Fromer** as Amici Curiae in Support of Petitioner, in *Star Athletica, LLC v. Varsity Brands, Inc.*, No. 15-866 (with Christopher Buccafusco, Meir Feder, and Matthew J. Silveira) (2016)
- United States Supreme Court, Brief of Professors Jeannie Suk Gersen and **C. Scott Hemphill** as Amici Curiae in Support of Respondents, in *Star Athletica, LLC v. Varsity Brands, Inc.*, No. 15-866 (2016)

Chris Sprigman focused on the constitutionality of the Trademark Dilution Law under the First Amendment and the application of principles of fair use in copyright to the creation of a database and its different functions, respectively, in separate amicus curiae briefs filed in two cases before the US Second Circuit Court of Appeals:

- United States Court of Appeals for the Second Circuit, Brief of Amicus Curiae Law Professors in Support of Defendant-Appellee, in *Louis Vuitton Malletier, S.A., v. My Other Bag, Inc.*, No. 16-0241 (**Chris Sprigman** with Rebecca Tushnet) (2016) (**Barton Beebe** joined the brief)
- United States Court of Appeals for the Second Circuit, Brief of Amicus Curiae Professors of Intellectual Property Law in Support of Appellant/Cross-Appellee, in *Fox News Network, LLC, v. TVEyes Inc.*, No. 15-3885 (**Chris Sprigman** with Michael Scott Leavy and Rebecca Tushnet) (2016)

On behalf of over two dozen copyright law scholars, **Jason Schultz** and the students in his Technology Law & Policy Clinic filed an amicus brief in the appeal of *Capitol Records, LLC v. ReDigi Inc.*, arguing that the language of the Copyright Act's Section 109(a), its context, its history, and the case law supported a broad reading of the first sale doctrine that would allow owners of particular digital phonorecords to use ReDigi's service to transfer ownership. **Jason Schultz** recently argued the case before the US Second Circuit Court of Appeals on behalf of amici curiae.

THE 17TH ANNUAL INTELLECTUAL PROPERTY SCHOLARS CONFERENCE HONORS ROCHELLE DREYFUSS



Professor Dreyfuss delivered the IPSC's first career retrospective on August 10, 2017. Here are some excerpts from her keynote address*:

I started teaching in 1983 and there are many differences between then and now.... The first difference is evident in this room—the change in the size of the IP professoriate. Now, we write to a larger audience against a much larger literature—that has pluses and minuses. On the one hand, at the start of my career I could

write about anything—there was no such thing as preemption; on the other hand, no one was there to read what I'd written. My first intellectual property conference was at the University of Virginia. There were around 20 of us and we looked at one another in amazement....

The second difference goes to why I started in the field.... In my day, you got to choose one course and one seminar. Everything else was assigned, whether you knew something about the topic or not. I chose civil procedure and a seminar in law and science. My initial assignment was environmental law, but that was soon changed to IP....

And that brings me to the third difference between then and now: how the academy thinks about intellectual property law.... Almost no one in the academy saw intellectual property as about anything but allocating rents among private parties. As far as the economy goes, transactions involving intellectual property were considered a sideshow. No one perceived any questions of theoretical interest or normative consequence about how the law was structured....

**Please see the Engelberg Center website for Professor Dreyfuss's full keynote address.*

IP SCHOLARS COMMENT ON PROFESSOR DREYFUSS'S SCHOLARSHIP

The Continued Relevance of Dreyfuss's Work on Specialized IP Adjudication

Presenter: **Melissa F. Wasserman '07** (University of Texas School of Law, Austin)

Rochelle Dreyfuss is one of a handful of scholars that helped make intellectual property law, and patent law in particular, a legitimate and important area of focus within the academy. In her work on specialized intellectual property adjudication, Professor Dreyfuss was one of the very first in the field to think deeply about design choices in the patent system. As the power dynamics of institutions in the patent system evolve, her body of work will continue to inform how future modifications to the institutional design of the patent system should proceed.

Why We Need To Read Rochelle Dreyfuss's Scholarship

Presenter: **Graeme Dinwoodie** (Faculty of Law, University of Oxford; Chicago-Kent College of Law)

One of the traits most emblematic of Rochelle's scholarship has been its engagement with other more general fields of law, such as private international law. For 20 years, her careful and enlightened scholarship on that intersection shows that one can embrace an internationalist approach to transnational IP litigation without imperiling the substantive balance of domestic US law. Those two decades of writing should be essential reading for scholars, stakeholders, and policymakers as a Judgment Convention returns to the Hague Conference agenda.

Rochelle Dreyfuss and Intellectual Property Pluralism

Presenter: **Michael Burstein '04** (Benjamin N. Cardozo School of Law)

Professor Dreyfuss has staked out a position as an IP pluralist, recognizing that innovation happens in many different settings. Through careful attention to the context in which innovation problems arise, her deep knowledge of and ability to think across IP fields and boundaries, and her consistent awareness of institutional arrangements outside of IP, Professor Dreyfuss rejects a one-size-fits-all approach to IP. Her distinguished body of work articulates a vision of innovation policy that allows innovation to thrive wherever and however it is found.



NYU SCHOOL OF LAW IP COURSE OFFERINGS

SURVEY

Survey of Intellectual Property (IL elective)
Survey of Intellectual Property (2L, 3L, and LLM)

ART LAW

Art Law
Advanced Topics in Art Law Seminar

COPYRIGHT LAW

Copyright Law
Advanced Copyright Law

PATENT LAW

Patent Law
Bio-Tech Patent Law
Life Sciences Patent Law
Patent Licensing Seminar
Patent Litigation Seminar

TRADEMARK LAW

Trademark and False Advertising Law
Branding and the Law
Trademark Law on the Internet
Advanced Trademark and Advertising Law

TRADE SECRET LAW

Trade Secret Law

ADVANCED TOPICS IN INNOVATION LAW & POLICY

Advanced Technology Law and Policy Clinic
Advanced Technology Law and Policy Clinic Seminar
Advanced Topics in Privacy Law Seminar
ASPIRE Scholarship Seminar (cybersecurity)
Communicating Academic Work to Policymakers Seminar
Cyber Crimes
Cybersecurity Law and Technology Seminar
Entertainment Law Seminar
Fashion Law and Business
Free Speech
Human Rights, Civil Society, and the Internet in China Seminar
Information Privacy Law
Innovation Law and Economics
Innovation Policy Colloquium
Innovation Without IP
Intellectual Property and Human Rights Seminar
Intellectual Property and Traditional Knowledge: The Politics of Law, Knowledge and Culture
Intellectual Property Crimes Seminar
Intelligence Gathering and Law Enforcement: Post 9/11 Seminar
International Intellectual Property Law
Internet and Business Law for Technology Companies
Internet Contracts
Labor and Employment in the Entertainment Industry
Law and Journalism Seminar
Law and the Many Faces of Information Seminar
Mass Media Law
Property Theory Seminar
Sports Law
Taxation of Intellectual Property
Technology Law and Policy Clinic
Technology Law and Policy Clinic Seminar
The Law of the Startup Seminar
Theories of Intellectual Property Law Seminar
Topics in Museum Studies: Museums & the Law

Technological advances are driving greater social, economic, and political change, including access to information, health care, and entertainment; impacts on the environment, education, and commerce; and facilitating greater surveillance by law enforcement agencies. These changes mean that issues related to privacy, consumer rights, free speech, and intellectual property are becoming increasingly critical and complex.

TECHNOLOGY LAW & POLICY CLINIC

The **Technology Law and Policy Clinic** is a semester-long, 6-credit course that focuses on the representation of individuals, nonprofits, and consumer groups that are engaged with these questions from a public interest perspective. The clinic is a mixture of fieldwork and seminar discussion, ranging from technology law and policy to the ethical challenges of representing public interest organizations. The seminar includes problem-solving workshops, guest speakers, and other components that expose students to the practice of technology law in the public interest.

Approximately one-half of the students work with the teachers of the clinic representing individuals, not-for-profits, and other public interest clients on matters primarily focused on intellectual property. Past representative matters include:

- Counseling the New York Public Library on the legal rules and risks associated with open source software production; and
- Filing amicus briefs in key copyright, patent, trademark, and other intellectual property cases.

The other half of the students work with the American Civil Liberties Union's Speech, Privacy & Technology Project and National Security Project on issues or cases currently on the Project's docket. Representative matters include:

- Filing public-records requests and lawsuits to inform the public about government surveillance programs. For example, the ACLU has litigated Freedom of Information Act requests to force the disclosure of records regarding the warrantless tracking of the location of people's cell phones and regarding new methods and technologies for disrupting large-scale protests.
- Developing ACLU policy priorities and state legislative strategies for ensuring that new laws regulating access to digital assets after death are privacy-protective.
- Contributing to various criminal and civil cases, through direct representation or amicus support that challenges government national-security surveillance.

The Technology Law and Policy Clinic is directed by Professor **Jason Schultz** and co-taught with Professor Brett Max Kaufman and Clinical Teaching Fellow **Amanda Levendowski** '14.

THE ENGELBERG CENTER COLLOQUIUM ON INNOVATION LAW & POLICY

Each year, the Engelberg Center sponsors a Colloquium on Innovation Law & Policy that includes both students and members of the innovation community, including faculty at NYU, faculty at other universities, law practitioners, and industry representatives. Topics are chosen on a yearly basis by those serving as the Colloquium faculty for that year.

The 2017 Colloquium, which was co-taught by Professors **Katherine Strandburg** and **Helen Nissenbaum**, examined the legal and policy challenges posed by society's increasing reliance on so-called "big data" in a broad range of public and private endeavors, such as targeted advertising, assessment of credit worthiness, urban management, health care, law enforcement, and counterterrorism.

The 2018 Colloquium will examine the relationship between intellectual property law and inequality. Beginning with general theories of inequality in its social, economic, cultural, political, and international aspects, the Colloquium will then consider how conditions of inequality affect and are affected by intellectual property law and policy. Among the topics for study are the impact of intellectual property law on public health, media policy, and distributive justice; the effects of innovation on domestic and global inequality; the access to intellectual property rights by persons of different backgrounds, economic classes, and geographic locations; and the ways in which intellectual property rights enhance or distort competition among innovators. The Colloquium will be co-taught by Professors **Barton Beebe** and **Jeanne Fromer**.



FEBRUARY 16
Julia Angwin
ProPublica
Algorithmic Accountability



MARCH 1
Solon Barocas PhD '14
Microsoft Research
*Taking Explanation Seriously
in Law and Machine Learning*



MARCH 2
Martha Poon
Columbia University, The
Committee on Global Thought
*Borrowing to Pivot—What Can
Microsoft Tell Us About the
Financing of the Cloud?*



MARCH 9
Mireille Hildebrandt
Vrije Universiteit Brussel, Law Science
Technology & Society (LSTS); Data
Protection and the Rule of Law at the
Science Faculty, Radboud University,
Nijmegen, The Netherlands
*From Law as Information to Law as
Computation*



MARCH 23
(Joint session with ILLJ Colloquium)
Vijaya Gadde '00
Twitter, Inc.
*Conversation About Social
Media, Public Discourse, and
International Law*



APRIL 6
Matthew Connelly
Columbia University,
Department of History
*Can We Use Artificial Intelligence
and Big Data to Identify State
Secrets?*



APRIL 13
Elizabeth Joh '00, PhD '04
UC Davis School of Law
*The Undue Influence of Surveillance
Technology Companies on Policing*

LLM PROGRAM



The LLM program in Competition, Innovation, and Information Law (CIIL) trains students by combining advanced policy and technical expertise with sophisticated legal analysis. The program aims to develop an integrated understanding of the dynamic forces that shape contemporary economic activity and innovation. Students in the CIIL LLM program choose one of two areas of principal focus—Intellectual Property and Information Law, or Antitrust and Competition Policy—while gaining an introductory foothold in the other area and exposure to other related areas of law.

The CIIL program also draws on NYU's strength in international law. The faculty includes leading experts in international and comparative aspects of competition policy and intellectual property law. Their courses and seminars enable students to understand the importance of competition policy and intellectual property law in today's global economy.

2016-17 COMPETITION, INNOVATION, AND INFORMATION LAW LUNCH SPEAKERS

SEPTEMBER 21

William Efron

Director, Federal Trade Commission Northeast Region
Antitrust and Consumer Protection Enforcement at the FTC

OCTOBER 19

Michal Gal

University of Haifa School of Law
Algorithmic Consumers

NOVEMBER 30

Judge Raymond Chen

United States Circuit Judge, United States Court of Appeals for the Federal Circuit
The Institutions of Patent Law

FEBRUARY 22

LLM Students Discuss How Legal Education Varies Among Their Home Countries

MARCH 22

Ayala Deutsch

Executive Vice President & Deputy General Counsel, NBA Properties, Inc.
The Challenges the NBA Faces in Enforcing Its Trademarks Worldwide

APRIL 26

Corey Salsberg

Vice President, Global Head IP Affairs, Novartis
Policy Issues and Legal Challenges Facing R&D-Dependent Companies

STUDENT LIFE IN NYU SCHOOL OF LAW'S INNOVATION COMMUNITY



The Intellectual Property Law and Entertainment Society (**IPELS**) of the NYU School of Law is a student-run organization that sponsors panels, events, and educational and networking opportunities that promote an understanding of entertainment, sports, fashion, information, internet, and technology law. By connecting NYU School of Law students with industry professionals, IPELS helps them obtain valuable career and academic advice. IPELS partners with the Art Law Society, Media Law Collaborative, and Sports Law Association.

The **NYU Journal of Intellectual Property & Entertainment Law (JIPEL)** is a student-run academic journal dedicated to encouraging scholarly discourse among academics, practitioners, and students interested in intellectual property and entertainment law topics. JIPEL publishes scholarly articles on timely and cutting-edge topics, along with comments and criticism of those articles by industry professionals. As NYU School of Law's first and only online journal, JIPEL provides a unique opportunity for online dialogue through comments from its readers. In keeping with its goals of open access and discourse, JIPEL makes its content available for free to anyone interested in intellectual property and entertainment law. JIPEL also sponsors academic programs and networking events that bring together members of the Intellectual Property and Entertainment Law Society, the Engelberg Center co-directors and affiliated faculty, innovators, industry and government experts, and practitioners.



THE 2017 JIPEL IP CAREERS SYMPOSIUM

JIPEL's 2017 "Careers in IP Symposium" brought together a broad cross-section of attorneys specializing in intellectual property law. The panelists' expertise ranged from concentrations in cybersecurity and data privacy to patent law and fashion law.

Anne Hassett moderated the evening's first panel, which focused on intellectual property attorneys with litigation practices. The panelists—Lauren Aguiar '95 (partner, Skadden, Arps, Slate, Meagher & Flom LLP) Alexandra Awai (associate, Willkie Farr & Gallagher LLP), Jennifer Wu '04 (partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP), Colman Ragan (Teva Pharmaceutical Industries Ltd.), and George Stamatopoulos '12 (associate, Gibson, Dunn & Crutcher LLP)—emphasized that many different roads can lead to intellectual property litigation as a career path.

The second panel focused on attorneys with transactional practices. In a discussion moderated by **Christopher Sprigman**, panelists Lori Lesser (partner and Head of Intellectual Property Transactions Practice, Simpson Thacher & Bartlett LLP), Douglas Hand '97 (founding partner, Hand Baldachin & Amburgey LLP), Jeremy Apple (associate, White & Case LLP), Preet Reddy (associate, Willkie Farr & Gallagher LLP), and Richard Samson (the *New York Times*) all agreed that elements of luck and "being in the right place at the right time" played a bigger part in their career trajectories than they had anticipated as law students.





Thomas Merante '17 was awarded the 2017 **Journal of Intellectual Property and Entertainment Law Prize** for the greatest contribution by a third-year editor. Tom, who was the JIPEL Editor-in-Chief, began his career in Fall 2017 as an associate at Willkie Farr & Gallagher LLP.



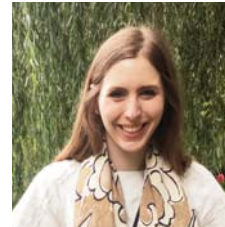
Mathilde Hallé '17 was awarded the **Frank T. Diersen Prize** for Distinction in the LLM Competition, Innovation, and Information Law program. Mathilde is an associate at DLA Piper. She advises private companies (whether French, foreign, or multinational) as well as public entities (such as governments and regulatory authorities) in their projects, in France and abroad. She has specific experience in telecommunications, media, information technology, internet, and data protection, notably in regulatory and transactional matters in the telecommunications sector in Africa and the Middle East.



Julian Pymeto '17 won NYU School of Law's 2017 award to the graduating student who wrote the most **outstanding note for JIPEL**. Julian holds undergraduate and graduate degrees from NYU Tandon School of Engineering; he began his career in Fall 2017 as an associate at Fitzpatrick, Cella, Harper & Scinto.



Julia Reeves '17 and **Katherine Nemeth '17** won the **Jack J. Katz Memorial Award** honoring the students who demonstrated excellence in the field of entertainment law.



Carl Mazurek '17 won the **Walter J. Derenberg Prize**, which is awarded to the graduating student having the highest academic grade in the area of copyright law.



Congratulations to **Hannah Pham '17** LLM, who won Second Prize in the 2017 Honorable William Conner Writing Competition, sponsored by the New York Intellectual Property Law Association (NYIPLA). Hannah received the award for her article "Standing Up for Stand-Up Comedy: Joke Theft and the Relevance of Copyright Law and Social Norms in the Social Media Age," at NYIPLA's Annual Meeting and Awards Dinner on May 16, 2017.

