10-26-2012

11th Annual Conference on Recent Developments in Intellectual Property Law and Policy

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Golden Gate University School of Law and the IP Law Center presents
The 11th Annual Conference on Recent Developments in Intellectual Property Law and Policy
October 26, 2012
Program Supplement
Welcome to the 11th Annual Conference on Recent Developments in Intellectual Property Law and Policy, presented by the Intellectual Property Law Center of Golden Gate University School of Law. This annual tradition, begun in late September 2001, was one of the first events developed as part of the foundation of our new IP Law Program. Over the years we have hosted presentations by leading thinkers in the area of IP Law, including Professor Mark Lemley, New Yorker writer Ken Auletta, Professor Dan Burk, Professor Susan Scafidi of the Fashion Law Institute, and many others.

We are pleased to present another great line-up of speakers and panels in this, our eleventh year. Our program leads off with Adjunct Professors and leading attorneys Timothy Cahn and Ryan Bricker discussing Rough Justice: Extending the DMCA’s Take-Down Model – Emerging Liability Standards and Challenges for Online Business. Visiting GGU Law Professor Jamie Lund brings interesting insights derived from an empirical study of music copyright infringement with her presentation discussing Juror Responses to Music Copyright’s Lay Listener Test.

We then shift focus to information technology and cloud computing with David Tollen. Following our lunch break, we are pleased to present a program by Santa Clara Law Professor Eric Goldman, the Director of the High Tech Law Institute at SCU Law, who will shed light on the “Stop Online Piracy Act”/“Protect IP Act” and online copyright laws.

The last two programs of the day focus on key areas of IP law and practice. Sharon Anolik, Adjunct Professor and Chief Privacy Officer at McKesson, and General Counsel John Tomaszewski of TRUSTe, usher us inside the complex world of digital privacy. We end with an interview by Professor Marc Greenberg of Alicia Del Valle, in-house counsel at Salesforce.com, a leader in customer relations management software and cloud computing.

The IP Law Center has continued this year to bring important participants in the IP bar and academy to the University to present their views as part of our Distinguished IP Law Speaker Series. This past year the Center welcomed Prof. Mark Lemley of Stanford Law School and Prof. Justin Hughes of Cardozo Law as our 4th and 5th Distinguished IP Law Speakers. Plans are in the works for other great speakers this coming year.

The Center’s online presence continues to grow as well. Our highly praised IP Law Book Review is in its first segment of its third volume, and Professor Greenberg’s IP Buzz blog continues to address new issues and cases in IP Law. Bookmark the main site page, www.gguip.com to stay abreast of all of the Center’s activities and to link to the review and blog.

Lastly, enjoy the conference, and let us know what you think of the program. We are always looking for ways to improve your experience, and thank you for your attendance and support of IP law at Golden Gate.

Sincerely,

Marc Greenberg
William Gallagher
Chester Chuang
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<thead>
<tr>
<th>Registration/Check-in</th>
<th>8:30 - 9:00</th>
<th>2nd floor lobby</th>
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<tr>
<td>Welcoming Remarks</td>
<td>9:00 - 9:15</td>
<td>Co-Directors Marc Greenberg &amp; William Gallagher</td>
</tr>
<tr>
<td>Rough Justice: Extending the DMCA’s Take-Down Model - Emerging Liability Standards and Challenges for Online Business</td>
<td>9:15 - 10:15</td>
<td>Timothy Cahn and Ryan Bricker, Kilpatrick Townsend, LLP</td>
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<td>Morning Break</td>
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<td>Juror Responses to Music Copyright’s Lay Listener Test</td>
<td>10:30 - 11:30</td>
<td>Jamie Lund, Visiting Professor at GGU Law</td>
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<td>IP and IT in the Cloud</td>
<td>11:30 - 12:30</td>
<td>David Tollen, Adeli and Tollen, LLP</td>
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<td>Lunch</td>
<td>12:30 - 1:45</td>
<td>Pick up lunch in 2nd fl. lobby</td>
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<tr>
<td>SOPA/PIPA and Online Copyright</td>
<td>1:45 - 2:45</td>
<td>Eric Goldman, Professor, Director of the High Tech Law Institute at Santa Clara University School of Law</td>
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<td>Afternoon Break</td>
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<tr>
<td>Data Privacy</td>
<td>3:00 - 4:00</td>
<td>Sharon A. Anolik (JD 96), McKesson; John Tomaszewksi, TRUSTe</td>
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<tr>
<td>Inside In-House: An Interview with Salesforce.com Attorney Alica Del Valle</td>
<td>4:00 - 5:00</td>
<td>Interview: Alica Del Valle of Salesforce.com by Marc Greenberg</td>
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<tr>
<td>Closing Remarks</td>
<td>5:00 - 5:15</td>
<td>Co-Directors Marc Greenberg &amp; William Gallagher</td>
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<tr>
<td>Post-conference Reception</td>
<td>5:15 - 7:00</td>
<td>Room 6210</td>
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</table>
We have arranged a temporary wifi login on the GGU campus for October 26, 2012:

username: iplaw
password: Ssng9ple

We kindly ask that you set the sound on all of your electronic devices to “silent” mode in order to minimize distractions during the program. Thank you and we hope you enjoy the conference.

At 12:30, lunch will be distributed in the 2nd floor lobby. Please form a single line and enjoy your lunch outside of the lecture hall. You may leave a jacket, but we recommend you take your valuables with you. We have a person monitoring the room so no one without a badge will enter except the cleaning staff. We have several locations where you can eat on campus including the Plaza (one level below the 1st floor), the GGU café at 40 Jessie St. behind the main building, and the 6th floor has quite a large space—take the elevator to 6 and exit the elevators with a sharp left. Please rejoin the lecture hall at 1:30-1:45 for the afternoon sessions.
Marc Greenberg

Marc H. Greenberg is Professor of Law, founding Director, and currently Co-Director of the Intellectual Property Law Center and Program at Golden Gate University of Law. A member of the faculty since 2000, he teaches Intellectual Property Survey, Internet and Software Law, Intellectual Property and New Technology, and Entertainment Law in the IP curriculum. He also teaches Civil Procedure, Business Associations and related courses in the general curriculum. He was the 2010-2011 Chair of the Art Law Section of the American Association of Law Schools, and is a past co-chair of the Copyright Section of the San Francisco Intellectual Property Law Association.

Professor Greenberg received his A.B. degree in English Literature from the University of California, Berkeley; his J.D. from the University of California, Hastings College of the Law, where he served as an articles editor of the Hastings Constitutional Law Quarterly and published the first of his scholarly works analyzing the First Amendment cases of the Supreme Court’s 1978 term.

Professor Greenberg’s scholarship has focused on legal issues pertaining to content on the Internet, obscenity law in online contexts, and copyright issues both in the U.S and in China. He is presently working on a book focusing on comic books, creativity and the law. His articles have been published in the Berkeley Technology Law Journal, The Syracuse Journal of Law and Technology, The John Marshall Review of Intellectual Property Law, and The Loyola Chicago University Journal of International Law.

Before joining the GGU faculty, Professor Greenberg practiced IP, entertainment and business law, in both transactional work as well as litigation, in several firms in Northern California. He was of counsel to Chickering and Gregory in San Francisco and was a managing partner in his own firm, Nelsen and Greenberg, also in San Francisco.
William Gallagher

William Gallagher is Professor and Co-Director of the IP Law Center at the Golden Gate University School of Law, where he teaches courses on intellectual property litigation, intellectual property law, torts, and legal ethics. He also currently serves as Associate Dean for Faculty Scholarship. From 2009-2011, Professor Gallagher was a Visiting Scholar at the Center for the Study of Law and Society at the UC Berkeley School of Law.

Professor Gallagher received his JD from the UCLA School of Law; his Ph.D. from the University of California, Berkeley School of Law (Jurisprudence and Social Policy Program); his MA from the University of Chicago; and his BA from the University of California, Berkeley.


Before entering full-time academia, Professor Gallagher was a partner in the San Francisco office of Townsend and Townsend and Crew LLP, where he specialized in patent, copyright, trademark, trade secret, and related intellectual property litigation in both state and federal courts nationwide.
Chester Chuang

Chester Chuang is an associate professor at the Golden Gate University School of Law, where he teaches contracts and patent law. His research focuses on patent law.

Professor Chuang received his J.D. from the New York University School of Law and his B.S. in Pharmacy from the Ohio State University. His most recent work examines the role of declaratory judgment actions in patent litigation:


Professor Chuang is currently on leave while working as Senior Corporate Counsel, Content Protection Technology for the Twentieth Century Fox Film Corporation in Los Angeles, California.

Prior to entering academia, Professor Chuang was Senior Corporate Counsel for Electronics For Imaging, Inc., a leader in digital imaging and print management solutions for the commercial printing and enterprise markets. He also worked previously as an associate with O’Melveny & Myers and Perkins Coie, specializing in IP licensing and litigation, and served as a judicial clerk for the Hon. Saundra Brown Armstrong, U.S. District Court, N. D. Cal.
Tim Cahn is a partner and co-chair of the Copyright Team at the 650-lawyer firm of Kilpatrick Townsend & Stockton LLP. After graduating Harvard Law School in 1990 and clerking for a federal appeals court judge, Tim moved to the Bay Area to practice copyright and trademark litigation. Tim’s career has tracked the expansion of the internet, which afforded him opportunities to develop expertise in brand and rights enforcement in cyberspace. He filed the first lawsuit in California challenging trademark infringement in a domain name, prior to the passage of the federal Anti-Counterfeiting Consumer Protection Act of 1996, and one of the first lawsuits seeking *in rem* forfeiture of numerous domain names in a single suit. He also pioneered the use of pre-judgment asset freezes and other equitable relief on behalf of brand-owning clients.

Tim has litigated over 100 trademark and copyright matters. In addition, Tim is experienced in developing and implementing comprehensive intellectual property enforcement and anti-piracy programs for major consumer brands. His clients have included such prominent companies as Levi Strauss & Co., Williams-Sonoma, Inc., Sony Computer Entertainment America, Inc., LeapFrog, Amazon.com, Apple, Inc., and many others.

Tim regularly gives presentations on trademark and copyright related matters including a recent presentation to the San Francisco Bar Association, entitled “The DMCA 12 Years Later: Pitting Copyright Protection Against Technological Innovation?” He has published practice-oriented and academic law review articles, most recently “Head In(to) the Cloud?” in Corporate Counsel magazine and a review of “Trademark and Copyright Litigation,” for the *IP Law Book Review*. The 2012 Legal 500 Series recently recognized Tim as a “Leading Lawyer” in copyright matters.

Tim is very active in *pro bono* matters and was recently profiled for his *pro bono* work by *Diversity & the Bar* magazine. In 2011, the Minority Bar Coalition of the Greater Bay Area honored Mr. Cahn with its Unity Award. Tim also is an adjunct professor, teaching Law of Online Gaming in Golden Gate University School of Law’s Intellectual Property Program.
Ryan Bricker

Ryan Bricker joined the trademark and copyright group at Kilpatrick Townsend & Stockton in 2009, after graduating from George Washington University Law School. He has merged a background in technology and internet infrastructures with a practice focused on counseling clients in matters related to protecting and enforcing copyright and trademark rights on the web. As a result, more than a little of Ryan’s time has been spent unpacking and identifying solutions to IP problems that lie on the fringes of copyright and trademark law, including creative methods of identifying anonymous, off-shore infringers; issues related to hardware, software, and data security; and other challenges flowing from social media spaces, an array of media delivery channels, and e-commerce.

Ryan’s experience has proven useful not only to technology and internet companies, but also businesses in industries as far flung as fashion, wine, education, speakers and audio equipment, gambling, and furniture and household products. Ryan has spoken about copyright and trademark issues on the internet at several CLE events recently.
Jamie Lund

Jamie Lund is an assistant professor at St. Mary’s University Law School in San Antonio, where she heads the school’s intellectual property program. She is currently visiting at Golden Gate University School of Law.

Lund graduated with her Juris Doctorate with honors from the University of Chicago Law School and with her Bachelor of Music cum laude from Brigham Young University. While at BYU, Lund performed in the orchestra for the 2002 Winter Olympics Closing Ceremony, playing alongside such fan favorites as KISS, Willie Nelson, and Bon Jovi.

Recent publications include *An Empirical Examination of the Lay Listener Test in Music Composition Copyright Infringement* in the Virginia Sports and Entertainment Law Journal, which was featured in the peer-reviewed JOTWELL (The Journal of Things We Like (Lots)), and *Property Rights to Information* in the Northwestern Journal of Technology and Intellectual Property.

Prior to teaching, Lund worked at the law firm of Irell & Manella in Los Angeles. At Irell she worked on a diverse range of intellectual property matters as well as pro bono work for the Navajo Nation relating to the uranium pollution of Navajo lands. She also participated in the LA County Bar’s Trial Advocacy Program, serving as a volunteer prosecutor with the Ventura County District Attorney’s office.
David W. Tollen

David Tollen is the author of the American Bar Association’s bestselling manual on IT contracts, *The Tech Contracts Handbook: Software Licenses and Technology Services Agreements for Lawyers and Businesspeople* (IP Section of the ABA, 2010). He’s an attorney specializing in software, IT, and intellectual property agreements and the co-founder of Adeli & Tollen LLP, an IP and IT boutique with offices in San Francisco, Mountain View, and Los Angeles. He’s also the founder of Tech Contracts Chalkboard [www.techcontractshandbook.com], a company that provides training on closing IT deals, for salespeople, contract managers, and other businesspeople, as well as lawyers.

Mr. Tollen has negotiated and drafted intellectual property and technology contracts of all kinds, representing both buyers and sellers. In addition to his work as a lawyer in private practice and as a trainer, he has served as General Counsel of a publicly traded software company and as VP of Business Development for a profitable IT startup. He has degrees from Harvard Law School, Cambridge University in England, and U.C. Berkeley.

Mr. Tollen is passionate about organizing complex materials into simple lessons. That task lies at the heart of his book and his trainings on IT contracts. And in his spare time, he writes about history, making the past accessible to young people. He’s the author, under a pen-name, of a young adult novel that uses fantasy to teach, called *The Jericho River, A Magical Novel About the History of Western Civilization*. 
Eric Goldman

Eric Goldman is a Professor of Law and Director of the High Tech Law Institute at Santa Clara University School of Law. Before he became a full-time academic in 2002, he practiced Internet law for 8 years in the Silicon Valley. His research and teaching focuses on Internet, IP and advertising law topics, and he blogs on these topics at the Technology & Marketing Law Blog, [blog.ericgoldman.org] and the Tertium Quid blog at Forbes, [blogs.forbes.com/ericgoldman]. In 2012, Managing IP magazine named him to a shortlist of North American “IP Thought Leaders,” and in 2011, he received the “IP Vanguard” award (in the academic/public policy category) from the California State Bar’s IP Section.
Sharon Anolik (JD 96)

Sharon Anolik is Vice President and Global Privacy Risk and Strategy Leader for McKesson Corporation (FORTUNE 15), a leading healthcare services and information technology company.

Previously, she was Chief Privacy Official and Director of Corporate Compliance & Ethics for Blue Shield of California, responsible for overseeing privacy, corporate compliance & ethics, records management and legislative implementation. Those programs received external awards for innovation & effectiveness under Sharon’s leadership.

Sharon has also served as General Counsel & Chief Privacy Officer for Ask Jeeves; Deputy City Attorney for the city of San Francisco; in-house counsel for several technology companies; a Privacy specialist for Deloitte & Touche; a judicial clerk to the California Supreme Court and as an associate in private practice. A frequent industry speaker, Sharon sits on the Corporate Compliance, Privacy and Internal Audit Committee of the Board of El Camino Hospital, several privacy advisory boards and teaches Cyberlaw and Privacy at Golden Gate University School of Law. Sharon can be reached at sharon.anolik@mckesson.com.
As TRUSTe’s General Counsel and Corporate Secretary, John is responsible for all of TRUSTe’s legal affairs and for providing legal and business counsel to the Chief Executive Officer and the Board of Directors. He also ensures that enforcement and compliance efforts are thorough, transparent and defensible.

Prior to joining TRUSTe, John served as Chief Privacy Officer of CheckFree Corporation, the leader in electronic billing and payment. In this role as CPO, John was responsible for developing, implementing and maintaining CheckFree’s privacy program.

In addition to this, John is an attorney who has focused on the development of trust models within business systems since 1999. He has prepared privacy statements, fair information practice standards, PKI policies, certification practice statements, certificate policies, end-user agreements, non-disclosure agreements, and other documents for clients in the U.S., Europe, and Asia. He has also advised client legal counsel to develop their understanding of the trust models associated with e-commerce.

John has participated in the drafting of several information security publications, including the Digital Signature Guidelines and the PKI Accreditation Guidelines, which was developed by the Information Security Committee of the American Bar Association. John has also provided input to the drafting of the Uniform Electronic Transactions Act, promulgated by the National Convention of Commissioners for Uniform State Law, and has worked with the Office of the Legal Advisor of the US Department of State regarding the UN Model Law on Electronic Commerce. He has been published several times in academic legal journals on the subject of information security, e-commerce, and the law.

Prior to his CheckFree position, John was a PKI consultant with Baltimore Technologies, and was previously engaged in the private practice of law, focusing on e-commerce and corporate matters. John graduated from St. Mary’s University School of Law in San Antonio, Texas, where he held the position of Solicitations Editor of the Law Journal. He completed his undergraduate work at the University of Texas, Austin.
Alica Del Valle

Alica Del Valle, a native of Mexico City, currently serves as Trademark Counsel for salesforce.com, inc. Salesforce.com is a leader in enterprise cloud computing, recognized by Forbes as the most innovative company in the world. Ms. Del Valle is responsible for developing, managing, and enforcing salesforce.com, inc.’s global trademark portfolio, developing departmental processes, instituting and managing domain name disputes and acquisitions, negotiating terms in technology licensing, settlement of infringement matters, and strategic alliances, and IP due diligence.

Prior to joining salesforce.com, Ms. Del Valle worked for an IP specialty firm counseling clients in digital marketplace and new media matters and served as a Staff Attorney for the Supreme Court of California.

Ms. Del Valle received undergraduate degrees in English and Legal Studies from the University of California, Berkeley and her Juris Doctorate from the University of California, Davis School of Law.

She currently serves on an Academic Committee of the International Trademark Association, on the Boards of Directors of the San Francisco Intellectual Property Law Association and Bar Association of San Francisco Barristers Club, and the BASF Technology Committee.
year ago I left the firm life when I was given the opportunity to join the team of talented in-house lawyers at salesforce.com—the company Forbes magazine recognized last year as the most innovative company in the world. As I am sure the myriad other attorneys who have made the transition in-house appreciate, my decision to make the move was by no means made lightly. The most significant consideration in making a change was neither leaving behind the dreaded billable hour nor finding greater work-life balance, but rather the unparalleled challenges and experiences that I expected would come with joining such a trending company. Looking back on my first year at salesforce.com, I find that reality has in many ways surpassed the expectations that originally propelled me.

One experience in particular—a trip to Mexico—stands out as a poignant example of how my time in-house has already come to affect me indelibly, both personally and professionally.

I was born in Mexico City to parents who, having grown up in rural Mexico, shared a childhood of limited means but big dreams. Neither of my parents is a college graduate. Through luck or circumstance or both, my parents, three siblings, and I were able to move to the United States when I was eight. I learned to speak English only thanks to a kind-hearted first-grade teacher, Mrs. Mets, who stayed after school every day to teach me. I spent sixth grade and junior high in Mexico, then returned to the United States and have lived here ever since. By all statistical measures I should not have graduated from college, much less ended up a San Francisco attorney. Nevertheless, armed with my own big dreams and an ardent fighting spirit, I received undergraduate degrees in English and legal studies from the University of California, Berkeley and a Juris Doctor degree from the UC Davis School of Law. Thanks to hard work and a lot of luck, my legal career has been peppered with professionally gratifying experiences, including developing relationships with great mentors, holding leadership positions with The Bar Association of San Francisco and the San Francisco Intellectual Property Association, and even clerking for the Supreme Court of California. Then came salesforce.com.

I handled my first project for salesforce.com as a young law firm associate in mid-2007 and was instantly intrigued by the company. From very early in my representation, it was
clear to me that salesforce.com was changing the face of technology. In the years that followed, more and more of my practice focused primarily on salesforce.com.

So when the opportunity arose to join the company as its trademark counsel, I was thrilled at the prospect of being a more integral part of salesforce.com’s extraordinary trajectory. As trademark counsel, I am responsible primarily for developing, managing, and enforcing the company’s global trademark portfolio and strategy. I never could have imagined, however, that this role would lead me back to my childhood home to play a role in one of Mexico’s own transformations.

In November 2011, Mexican Senator Luis Walton Aburto introduced a measure in the Mexican Senate to consider the country’s accession to the Madrid Protocol, which along with the Madrid Agreement governs the Madrid system for international registration of trademarks.

In early March 2012, I received an unexpected invitation from Laura Cruz, external relations manager for Latin America for the International Trademark Association (INTA). Since 2006, Cruz has spearheaded various initiatives throughout Latin America to help local governments implement modern intellectual property (IP) systems. In line with this work, Cruz was helping assemble a delegation to travel to Mexico City to help educate Mexican officials on the risks, benefits, and uses of the Madrid system as Mexico considered its possible accession to the Madrid Protocol. Given my experience with the Madrid system and the fact that I am a native Spanish speaker, Cruz believed I would be a good addition to the delegation.

The Madrid system, established under the Madrid Agreement Concerning the International Registration of Trademarks in 1891 and further extended under the Protocol Relating to the Madrid Agreement (the Madrid Protocol) in 1989, was intended to promote harmonization of international trademark laws and assist businesses in the global protection of marks by easing administrative burdens and allowing for centralized control for trademark owners. While the Madrid system currently boasts eighty-seven member countries throughout the world, in Latin America only Colombia, Cuba, and Antigua and Barbuda have joined the Madrid Protocol.

Joining the Madrid Protocol requires countries to optimize their trademark office operations, including adopting harmonized registration procedures and expedited processing times. While these administrative requirements can be burdensome for countries whose national offices have not modernized, joining the Madrid Protocol has proven helpful in the progressive internationalization of member countries, especially among emerging economies. In the past several years, a number of countries in Latin America, including Argentina and Brazil, have considered accession without success. Mexico’s accession would mark a significant step in leading other Latin American countries to prioritize the strengthening of their IP systems collectively to increase the region’s already growing importance in the global trade arena.

Within weeks of Cruz’s first email, I was arriving at Benito Juárez International Airport in Mexico City, after nearly a decade since my last visit. The last time I had flown into that airport I was not yet a licensed attorney. This fact resounded in my mind as I joined representatives from INTA and the World Intellectual Property Organization, prepared to speak about cloud computing, global trade, and options for international trademark protections—in Spanish, of course.
In the days that followed, the delegation had the honor of being received by officials from the Mexican Institute of Industrial Property, the Mexican Federal Regulatory Commission, and the Mexican Congress. We spoke at length about potential changes to Mexico’s IP system relative to its existing regulatory scheme, implementation of the Madrid system in other countries around the world, the potential impact on Mexican corporations—from multinationals to small businesses, and addressed concerns raised by the community of IP practitioners. Not surprisingly, we received candid feedback on concerns about change and uncertainty and gained insight into potential opposition to the burdens that would come with accession. After a whirlwind trip, I flew back to San Francisco—now my home—unclear about how the story would end.

On April 25, 2012, a few weeks after my return, Mexico’s Senate unanimously approved the draft decree on Mexico’s accession to the Madrid Protocol. In the months to come, Mexico is expected to finalize its accession and, together with Colombia (where the protocol went into effect August 29, 2012), will likely lead the charge in the transformation of Latin America’s IP landscape.

Being a part of a process with such potentially significant impact in an increasingly competitive global economy was certainly a professionally unique and deeply gratifying experience. In my case, it was also personally gratifying to have had the opportunity to travel back to a life I knew in one country by virtue of the life I have built in another.

Alica Del Valle is trademark counsel for salesforce.com. She is serving a second year on the Barristers Club Board of Directors and is treasurer.

Experience counts and we offer our clients and colleagues a level of expertise and dedication that’s hard to find.

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www.sfbar.org/register
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Emerging Liability Standards and Challenges for Online Business
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Prof. Eric Goldman
Director, High Tech Law Institute
http://www.ericgoldman.org • http://hightechlaw.scu.edu
egoldman@gmail.com
SOPA/PIPA and Online Copyright
Eric Goldman, Professor, Director of the High Tech Law Institute
at Santa Clara University School of Law

January 18, 2012
Imagine a World
Without Free Knowledge

For over a decade, we have spent millions of hours building the largest encyclopedia in human history. Right now, the U.S. Congress is considering legislation that could fatally damage the free and open internet. For 24 hours, to raise awareness, we are blacking out Wikipedia. Learn more.

Contact your representatives.

Your zip code: [ ] Look up
SOPA/PIPA and Online Copyright
Eric Goldman, Professor, Director of the High Tech Law Institute
at Santa Clara University School of Law

January 18, 2012

Kim Kardashian
@KimKardashian

We must stop SOPA/PIPA to keep the web open &
free. Click here en.wikipedia.org/wiki/Main_Page
to learn more about how u can help fight this
legislation

6:07 PM - 18 Jan 12 via web · Embed this Tweet
Reply Retweet Favorite
19 Senators opposed PIPA in one day:

- Kelly Ayotte (R-NH)*
- Mark Begich (D-AK)
- Roy Blunt (R-MO)*
- John Boozman (R-AR)*
- Scott Brown (R-MA)
- Ben Cardin (D-MD)*
- Tom Coburn (R-OK)
- John Cornyn (R-TX)
- Jim DeMint (R-SC)
- Orrin Hatch (R-UT)*
- James Inhofe (R-OK)
- Mark Kirk (R-IL)
- Mike Johanns (R-NE)
- Jeff Merkley (D-OR)
- Lisa Murkowski (R-AK)
- Marco Rubio (R-FL)*
- Olympia Snowe (R-ME)
- Pat Toomey (R-PA)
- David Vitter (R-LA)*

* = former PIPA co-sponsor

SOPA/PIPA and Online Copyright
Eric Goldman, Professor, Director of the High Tech Law Institute
at Santa Clara University School of Law

Next Battleground—Congress

Source: http://occupyallstreets.tumblr.com/post/20614523602
Next Battleground—Congress

H.R.____

To promote a level playing field for American innovators abroad and American job creation by improving the intellectual property attaché program, and coordinating and aligning intellectual property policy with compelling economic interests of the United States and freedom.

IN THE HOUSE OF REPRESENTATIVES

Mr. Smith of Texas (for himself, Mr. Conyers, Mr. Goodlatte, Mr. Wext, Mr. Issa, Mr. Broun, Mr. Roe, Mr. Castor, Mr. Thurber, and Mr. Scott) introduced the following bill, which was referred to the Committee on

A BILL

To promote a level playing field for American innovators abroad and American job creation by improving the intellectual property attaché program, and coordinating and aligning intellectual property policy with compelling economic interests of the United States and freedom.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Intellectual Property Attaché Act”.

4

5
SOPA/PIPA and Online Copyright

Eric Goldman, Professor, Director of the High Tech Law Institute
at Santa Clara University School of Law

Slide 9

Next Battleground—Executive Branch

The top 5 rogue cyberlockers receive 41 billion page views yearly

...That's over 5 views for every person on the planet

SOPA/PIPA and Online Copyright
Eric Goldman, Professor, Director of the High Tech Law Institute
at Santa Clara University School of Law

Slide 10

Next Battleground—Executive Branch

Fact Sheet

Websites seized during the eighth phase of Operation In Our Sites

IPR Center seizes 150 website domains selling counterfeit and pirated merchandise

Nov. 28, 2011
Next Battleground—Executive Branch

Breaking News: Feds Falsely Censor Popular Blog For Over A Year, Deny All Due Process, Hide All Details...

Imagine if the US government, with no notice or warning, raided a small but popular magazine’s offices over a Thanksgiving weekend, seized the company’s printing presses, and told the world that the magazine was a criminal enterprise with a giant banner on their building. Then imagine that it never arrested anyone, never let a trial happen, and filled everything about the case under seal, not even letting the magazine’s lawyers talk to the judge presiding over the case. And it continued to deny any due process at all for over a year, before finally just handing everything back to the magazine and pretending nothing happened. I expect most people would be outraged. I expect that nearly all of you would say that’s a classic case of prior restraint, a massive First Amendment violation, and exactly the kind of thing that does not, or should not, happen in the United States.

But, in a story that’s been in the making for over a year, and which we’re exposing to the public for the first time now, this is exactly the scenario that has played out over the past year -- with the only difference being that, rather than “a printing press” and “a magazine,” the story involved a “domain” and a “blog.”

There are so many things about this story that are crazy. It’s difficult to know where to start, so let’s give the most important point first: The US government has effectively admitted that it
Next Battleground—International Trade Agmts

The Anti-Counterfeiting Trade Agreement (ACTA)

Stopping SOPA and PIPA was a historic victory for digital citizens, but ACTA potentially poses a similar threat to the global Internet community. While the agreement’s stated goal of strengthening intellectual property rights is one all should support, it does so by undermining individual privacy rights and by empowering an unaccountable enforcement bureaucracy. And just like SOPA and PIPA, ACTA was crafted without input from citizens and key stakeholders in a secretive, closed-door process.

Worse, ACTA appears to be an unconstitutional power grab started by President George W. Bush and completed by President Barack Obama—despite the White House’s January 14 criticism of legislative solutions that harm the Internet and evoke individual rights. The Constitution gives Congress the power to pass intellectual property legislation—like SOPA and PIPA—and gives the Senate the power to ratify treaties. But the Obama administration maintains that ACTA is not even a treaty, justifying the exclusion of both American citizens and their elected representatives. It is a practice Vice President Joe Biden praised as a U.S. Senator. Closed doesn’t cut it. We opened up ACTA in Maricopa so you can join us, speak out and collaborate to build a better “treat.”

CHAPTER I: INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section 1: Initial Provisions

ARTICLE 1. RELATION TO OTHER AGREEMENTS

Nothing in this Agreement shall derogate from any obligation of a Party with respect to any other Party under existing agreements, including the TRIPS Agreement. [1]

ARTICLE 2. NATURE AND SCOPE OF OBLIGATIONS

1. Each Party shall give effect to the provisions of this Agreement. A Party may not invoke its development status, as provided in the TRIPS Agreement, as an excuse for non-compliance with its obligations under this Agreement.

SOPA/PIPA and Online Copyright
Eric Goldman, Professor, Director of the High Tech Law Institute
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Next Battleground—International Trade Agmts

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Free Trade Agreements
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Chile FTA
Colombia FTA
Israel FTA
Jordan FTA
KORUS FTA
Monaco FTA
North American Free Trade Agreement (NAFTA)
Orion FTA

Trans-Pacific Partnership
On November 12, 2011, the leaders of the nine Trans-Pacific Partnership countries—Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States—announced the achievement of the broad outlines of an ambitious, 21st-century Trans-Pacific Partnership (TPP) agreement that will enhance trade and investment among the TPP partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs. President Obama along with the other eight TPP leaders agreed to seek to finalize an agreement in the coming year.

- Trans-Pacific Partnership Leaders’ Statement
- FACT SHEET: The United States in the Trans-Pacific Partnership
- Outlines of the Trans-Pacific Partnership Agreement
- Trans-Pacific Partnership (TPP): Trade Ministers’ Report to Leaders
- Remarks by President Barack Obama in Meeting with Trans-Pacific Partnership

The Trans-Pacific Partnership (TPP) Agreement will feature new cross-cutting issues not previously included in trade agreements, such as making the regulatory systems
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Eric Goldman, Professor, Director of the High Tech Law Institute
at Santa Clara University School of Law
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Next Battleground—Courts

DECKERS OUTDOOR CORP.,
Plaintiff,

v.

LIYANGHUA, et al.,
Defendants.

PHILIP MORRIS USA INC,
Plaintiff,

vs.

ZHILIN JIANG, et al.,
Defendants.
Next Battleground—“Voluntary” Initiatives

Center for Copyright Information

The Content Theft Challenge
The fact about how content theft hurts the economy, working people and consumers >>

ON TWITTER
FOLLOW

Jill via @techpresident: “All the elements of the system that will make it a consumer-friendly ... need to be in place.” http://t.co/l2kWoPwFkR

NEWS FEED

April 2  Center for Copyright Information Announces Three Major Steps Towards Implementation

April 2  From Where I Sit

Content Theft Costs America:

More than 173,000 jobs
SOPA/PIPA and Online Copyright
Eric Goldman, Professor, Director of the High Tech Law Institute at Santa Clara University School of Law

Next Battleground—“Voluntary” Initiatives

Statement of Best Practices to Address Online Piracy and Counterfeiting

The Association of National Advertisers (ANA) and the American Association of Advertising Agencies (4As) strongly believe that U.S. advertisers must have confidence that their ads are not unintentionally providing financial support to, or otherwise legitimizing, “rogue” Internet sites whose primary and apparent purpose is to steal or facilitate theft of the intellectual property of America’s innovators and creators. U.S. advertisers must also have confidence that their corporate brands and images are not being harmed by association with such unlawful activity. In order to help address this complex problem, our Associations believe that our members should each commit to take affirmative steps to avoid placement of their ads on such sites.

At the outset, we emphasize that this commitment is not intended to foreclose advertising on legitimate social media or user-generated content sites, even if infringing content occasionally appears on such sites. Rather, this commitment addresses “rogue” sites that are dedicated to infringement of the intellectual property rights of others, in that they have no significant, or only limited, use or purpose other than engaging in, enabling, or facilitating such infringement. It is understood that in most instances, such sites will initially—and not conclusively—be identified by intellectual property owners. With respect to such sites, marketers and their agencies should seek to include conditions along the following lines in media placement contracts and insertion orders with ad networks and other intermediaries involved in their U.S.-originated digital advertising campaigns on both domestic and foreign Internet sites:

1. All such intermediaries shall use commercially reasonable measures to prevent ads from being placed on such sites;
2. All such intermediaries shall have and implement commercially reasonable processes for removing or excluding such sites from their services, and for expeditiously terminating non-compliant ad placements, in response to reasonable and sufficiently detailed complaints or notices from rights holders and advertisers;
3. All such intermediaries shall refund or credit the advertiser for the fees, costs and/or value associated with non-compliant ad placements, or provide alternative remediation.
SOPA/PIPA and Online Copyright
Eric Goldman, Professor, Director of the High Tech Law Institute
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Next Battleground—“Voluntary” Initiatives

ICANN Blog
Internet Corporation for Assigned Names and Numbers

Thought Paper on Domain Seizures and Takedowns
by Dave Postell on March 2, 2013

Recent legal actions (Rustock, CoreFlood and Kelios, among others) resulting in disrupting or dismantling major criminal networks have involved seizures of domain names, DNS name server reconfiguration and transfers of domain name registrations as part of the takedown actions.

This thought paper (PDF, 449 KB) offers guidance for anyone who prepares an order that seeks to seize or take down domain names. Its purpose is to help preparers of legal or regulatory actions understand what information top level domain name (TLD) registration providers such as registries and registrars will need to respond promptly and effectively to a legal or regulatory order or action. The paper explains how information about a domain name is managed and by whom. In particular, it explains that a seizure typically affects three operational elements of the Internet name system: domain name registration services, the domain name system (DNS).
The Future

- Jan. 18: consumers who love the Internet vs. incumbent monopolists. OUR VOTES MATTER!
- Post-Jan. 18 asymmetry: opponents need to win every battle; copyright owners only need to win once
- The only way to avoid de facto SOPA/PIPA: enact new immunities/safe harbors
Data Privacy
Sharon A. Anolik, McKesson; John Tomaszewksi, TRUSTe

Notes
Inside In-House
Interview with Salesforce.com Attorney Alica Del Valle by Marc Greenberg

Notes

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