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18th Annual Recent Developments in IP Law and Policy Conference

Golden Gate University School of Law

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GOLDEN GATE UNIVERSITY
SCHOOL OF LAW

**Center for
Intellectual Property
and Privacy Law**

**18TH ANNUAL RECENT
DEVELOPMENTS
IN IP LAW AND POLICY CONFERENCE
OCTOBER 25, 2019**

GGU CENTER FOR INTELLECTUAL PROPERTY AND PRIVACY LAW (CIPPL)

DIRECTOR

WILLIAM GALLAGHER
PROFESSOR OF LAW

TO: IP Law Conference Participants
FROM: GGU Center for Intellectual Property and Privacy Law (CIPPL)
DATE: October 25, 2019
RE: Welcome!

Dear Attendees:

Welcome to the 18th Annual Conference on Recent Developments in Intellectual Property Law and Policy, presented by the Center for Intellectual Property and Privacy Law (CIPPL) 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 & former Senior Advisor to the Obama Administration Justin Hughes, New Yorker writer Ken Auletta, Professor Dan Burk, Professor Susan Scafidi of the Fashion Law Institute, and many others. This year we are especially pleased to host Professor Jessica Silbey from Northeastern University School of Law as our distinguished Academic Speaker.

We are pleased to present another great line-up of speakers and panels in this, our eighteenth year. The speakers at today's conference are experts in the fields of patents, copyrights, trademarks, and privacy law. They are addressing some of the cutting-edge issues that face practitioners and academics in IP law today.

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,



William Gallagher

Director
Golden Gate University
Center for Intellectual Property and Privacy Law

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. We have several locations where you can eat on campus including the Plaza (one level below the 1st floor), the GGU café in the GGUhub on the 1st floor. Please rejoin the lecture hall at 1:45 for the afternoon sessions.

Wireless internet access is available! Instructions for login are below:

1. Open your list of Wi-Fi connections and select "GGU-Guest".
 2. There is no key or token needed to connect.
 3. Once connected, open a browser. The browser or your device’s software will redirect you to a login page.
 4. Use the username/password credentials:
 - a. Username: iplaw1
 - b. Password: o4Kqji
 5. On the next page, review and accept GGU's Acceptable Use Policy (AUP) to proceed.
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CONFERENCE SCHEDULE

Registration/Check-in	8:30 - 9:00	2 nd floor lobby
Welcoming Remarks	9:00 - 9:15	Director William Gallagher
Unraveling the Copyright Patchwork: US and EU Responses to Creators' Rights in the Digital Market	9:15 - 10:15	John R. Wierzbicki (Witkin Legal Institute)
Morning Break	10:15 - 10:30	
Our Eroding Privacy: What has Changed Since the Snowden Revelations (Panel)	10:30 - 11:30	Chair - Adam Sand (TraxRetail) Chris Donewald (Affirm) Sierra Luther (23andMe) Mark Cohen (Law Offices of Mark Cohen)
Surveying Patent Law's Ever-changing Landscape -- 2019 and Beyond (Panel)	11:30 - 12:30	Chair - Robert McFarlane (Hanson Bridgett) Megan Olesek (Turner Boyd) Sheila Martinez-Lemke (WAVS ^{IP}) Duane Mathiowetz (Morgan Franich LLP)
Lunch	12:30 - 1:45	Pick up lunch in the 2 nd floor lobby
Effective Brand Enforcement: In House Perspectives (Panel)	1:45 - 2:45	Chair - Austin Phillips (Facebook) Kathy Tsai (GoPro, Inc.) Stephanie Hall (Lyft) Shannon King (Williams-Sonoma)
Afternoon Break	2:45 - 3:00	
IP and Fundamental Values in the Internet Age	3:00 - 4:00	Professor Jessica Silbey (Northeastern University School of Law)
Working with Creators: Perspectives from Entertainment Law Lawyers (Panel)	4:00 - 5:00	Chair - Professor Marc Greenberg (GGU Law) Tony Berman (Berman Entertainment and Technology Law) Brooke Oliver (50 Balmy Law P.C.) Michael Ashburne (Law Offices Of Michael Ashburne)
Closing Remarks	5:00 - 5:15	Director William Gallagher
Post-conference Reception	5:15 - 6:45	Room 6210

FEATURED ACADEMIC SPEAKER



Jessica Silbey is a Professor of Law at Northeastern University School of Law in Boston, where she also directs the Center for Law, Innovation and Creativity (CLIC). She is Core Faculty at the NuLab for Maps, Texts, and Networks and is also an Affiliate Professor of English in the College of Social Sciences and Humanities at Northeastern University. In 2018, Professor Silbey was awarded a Guggenheim Fellowship for her interdisciplinary work in law and the humanities. Her scholarship focuses on the empirical and humanistic dimensions of the legal regulation of creative and innovative work. She studies common and conflicting narratives within creative and innovative communities and the IP law and policy that purport to

regulate them. Her most recent book is *The Eureka Myth: Creators, Innovators and Everyday Intellectual Property* (Stanford University Press 2015). She is working on another book (Stanford University Press 2020) called *Against Progress: Intellectual Property and Fundamental Values in the Internet Age*. Other representative publications in intellectual property law include: *Justifying Copyright in the Age of Digital Reproduction: The Case of Photographers*, 9 U.C. Irvine L. R. 405 (2019); *Heuristic Interventions in the Study of Intellectual Property*, 101 U. Minnesota L. Rev. Headnotes 332 (2017); *Fairer Uses*, 96 B.U. L. Rev. 857 (2016); *Patent Variation: Discerning Diversity Among Patent Functions*, 45 Loy. U. Chi. L. Rev. 441 (2013); *Comparative Tales of Origins and Access: The Future of Intellectual Property Law*, 61 Case Wes. Res. L. R. 195 (2011), and *Mythical Beginnings of Intellectual Property*, 15 Geo. Mason L. R. 319 (2008). Professor Silbey has been a Distinguished Lecturer at the University of Washington (Shidler Lecture) and at the Willson Center for Humanities and Arts at the University of Georgia. She was a Faculty Associate at the Harvard Berkman-Klein Center for Internet and Society and is currently an Affiliate Fellow at the Yale Information Society Project. She received her B.A. from Stanford University and her J.D. and Ph.D. (Comparative Literature) from the University of Michigan. She clerked for Judge Robert E. Keeton on the United States District Court for the District of Massachusetts and Judge Levin Campbell on the United States Court of Appeals for the First Circuit. Before becoming a law professor, she practiced law in the disputes department of the Boston office of Foley Hoag LLP focusing on intellectual property, bankruptcy and reproductive rights.

GGU CENTER FOR INTELLECTUAL PROPERTY AND PRIVACY LAW FACULTY



William Gallagher is Professor and Director of the Center for Intellectual Property and Privacy Law (CIPPL) at the Golden Gate University School of Law, where he teaches courses on intellectual property litigation, intellectual property law, torts, and legal ethics. He has been a Visiting Scholar at the Center for the Study of Law and Society at the UC Berkeley School of Law (2009-2011 and 2015).

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.

Professor Gallagher is the Founding Editor of the online, peer-reviewed journal, *The IP Law Book Review*. He is also the Co-Founder of the Law and Society Association collaborative research network on “Culture, Society, and Intellectual Property”.

Professor Gallagher is the author of articles on intellectual property law and professional ethics, which have appeared in journals such as the *Santa Clara Law Review*, *The Santa Clara Computer & High Tech Law Journal*, *The John Marshall Review of Intellectual Property Law*, *Pepperdine Law Review*, *Law and Social Inquiry*, *Jurisprudence and Social Policy Program Faculty Working Papers* (University of California, Berkeley School of Law), and the *Law and Politics Book Review*. His edited book, *International Essays in Law and Society: Intellectual Property*, was published in 2007 by Ashgate Press. A second book, *Intellectual Property Law in Context: Towards a Law and Society Perspective*, is forthcoming from Cambridge University Press.

Before entering full-time academia, Professor Gallagher was a partner in a San Francisco law firm, where he specialized in patent, copyright, trademark, trade secret, and related intellectual property litigation in both state and federal courts nationwide.



Marc H. Greenberg is a Professor of Law and the founding Director of the Center for Intellectual Property and Privacy Law (CIPPL) and Program at Golden Gate University School 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, Property, Wills and Trusts, and related courses in the general curriculum. He was the 2010-2011 Chair and is presently on the Executive Board 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. He is a member of the Books Editorial Board of the

IP Law Section of the ABA, and the Vice Chair of the Literary Works Committee for the IP Section.

Professor Greenberg received his A.B. degree in English Literature from the University of California, Berkeley; and his J.D. from the University of California, Hastings College of the Law. While in law school 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 comic art, content on the Internet, obscenity law in online contexts, and copyright issues both in the U.S and in China. In 2014 his book, *COMIC ART, CREATIVITY AND THE LAW* was published by Edward Elgar Publishing. In 2016, his book, *COPYRIGHT TERMINATION AND RECAPTURE LAW: GOOD INTENTIONS GONE AWRY*, was published by ABA Publishing and the IP Law Section. 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*.

Professor Greenberg is still an active practitioner providing legal services to select clients via his firm, Law Office of Marc H. Greenberg.



Samuel F. Ernst is a Professor at Golden Gate University School of Law. Professor Ernst teaches in the areas of intellectual property, contracts, patent law, and copyright law. Professor Ernst has authored numerous law review articles on patent law and contract law and is the co-author with Judge Timothy Dyk of the U.S. Court of Appeals for the Federal Circuit of the chapter on “Patents” in the treatise *Business and Commercial Litigation in the Federal Courts*. From 2013 to 2017, Professor Ernst was

a professor at the Chapman University Fowler School of Law. Prior to entering academia Professor Ernst was a partner at the international law firm of Covington & Burling in San Francisco, practicing intellectual property and appellate litigation while maintaining an active pro bono practice focusing on veterans disability recovery, civil liberties, and homeless advocacy. During these years Professor Ernst also co-taught Pre-Trial Civil Litigation at the U.C. Berkeley School of Law. After law school Professor Ernst served as a law clerk to the Honorable Timothy Dyk on the U.S. Court of Appeals for the Federal Circuit. In 2010, Professor Ernst was recognized by the Federal Circuit Bar Association for his work on behalf of veterans. In 2006 and 2008, he received a Certificate of Excellence from the Berkeley Food and Housing Project.



Johanna K.P. Dennis is our new Associate Director for Legal Writing and Research and Associate Professor of Law. She will work closely with Professor McKenna in developing upper-division legal writing courses. She also teaches intellectual property law, which will add to our already robust I.P. program.

Professor Dennis just moved to the Bay Area after serving on the faculty at the University of Arkansas-Little Rock's Bowen School of Law. Prof. Dennis has also served on the faculties of Northeastern University School of Law, Southern Illinois University School of Law, Southern University Law Center, Vermont Law School, Touro College – Jacob

D. Fuchsberg Law Center, and Florida A&M University College of Law.

She has taught courses in legal writing, environmental law, patent law, and law and medicine. She has substantial practice experience in immigration law and has technical expertise in chemistry, molecular biology, and FDA regulation of clinical trials and product development.

Professor Dennis's publications span the fields of intellectual property-biotechnology, immigration law, and teaching pedagogy. She has coached, supported, and judged law school teams in regional and national moot court competitions. Prior to entering academia, Professor Dennis clerked for the Honorable William P. Gilroy (Ret.) in the Superior Court of New Jersey, Appellate Division, and she worked on civil service employment appeals with the State of New Jersey, Department of Personnel, Division of Merit System Practices and Labor Relations (now Civil Service Commission). Professor Dennis is admitted to the Pennsylvania bar, the U.S. Court of Appeals for the Second Circuit, and the U.S. Patent and Trademark Office.



David Franklyn is a prominent law professor who is considered one of the nation's preeminent experts on intellectual property and technology law. He joined the faculty of Golden Gate University in 2018. Since 2000, he has been the Director of the McCarthy Institute for IP and Technology Law at the University of San Francisco. He consults with some of the world's leading companies and serves as an expert witness in trademark and IP cases. At GGU, Franklyn has a joint

appointment between the School of Law and the Ageno School of Business. This joint appointment will allow students to take classes that integrate legal and business principles. David has a JD, from University of Michigan Law School and a BA from Evangel College. His professional and teaching experience include Director of the J. Thomas McCarthy Institute for IP and Technology Law. Professor of Law, University of San Francisco School of Law, 2000-2018. Visiting Professor of Law, University of California, Hastings College of Law, 2006-2007. Assistant and Associate Professor of Law, Salmon P. Chase College of Law, Northern Kentucky University, 1996-2000. Visiting Assistant Professor of Law, University of Cincinnati College of Law, 1999. David has several publications and et al. *Going Native: Can Consumers Recognize Native Advertising? Does It Matter?* 19 Yale J.L. & Tech. 77 (2017) with Adam Kuhn. *The Problem of Mop Heads in the Era of Apps: Toward More Rigorous Standards of Value Apportionment in Contemporary Patent Law*, 98 J. Pat. & Trademark Off. Soc'y 182 (2016) with David A. Hyman. *Search Bias and the Limits of Antitrust: An Empirical Perspective on Remedies*, 55 Jurimetrics 339 (2015) with Adam Kuhn. *Owning Oneself In a World of Others: Towards a Paid-For First Amendment*, 49 Wake Forest L. Rev. 977 (2014) with Shari Seidman Diamond. *Trademark Surveys: An Undulating Path*, 92 Tex. L. Rev. 2029 (2014) with David A. Hyman.

Trademarks as Search-Engine Keywords: Who, What, When, 92 Tex. L. Rev. 2117 (2014) with David A. Hyman. *Trademarks as Search Engine Keywords: Much Ado About Something?* 26 Harvard J. L. & Tech. 481 (2013). The European Court of Justice Rules on Keyword Ads and Trademark Rights, 14 Intell. Prop. L. Bull. 89 (2010). *The New Federal Anti-Dilution Act: Reinstating the Myth of Likely Dilutive Harm as a Mask Anti-Free-Rider Liability*, 11 Intell. Prop. L. Bull. 199 (2007). *Debunking Dilution Doctrine: Toward a Coherent Theory of the Anti-Free-Rider Principle in American Trademark Law*, 56 Hastings L.J. 117 (2004). *Owning Words in Cyberspace: The Accidental Trademark Regime*, 2001 Wis. L. Rev. 1251 (2001). *The Apparent Manufacturer Doctrine, Trademark Licensors and the Third Restatement of Torts*, 49 Case W. Res. L. Rev. 671 (1999). *Toward a Coherent Theory of Strict Tort Liability for Trademark Licensors*, 72 S. Cal. L. Rev. 1 (1998). His honors and awards include the 2016 Rossman Award for article: with Adam Kuhn. *The Problem of Mop Heads in the Era of Apps: Toward More Rigorous Standards of Value Apportionment in Contemporary Patent Law*, 98 J. Pat. & Trademark Off. Soc'y 182 (2016).

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