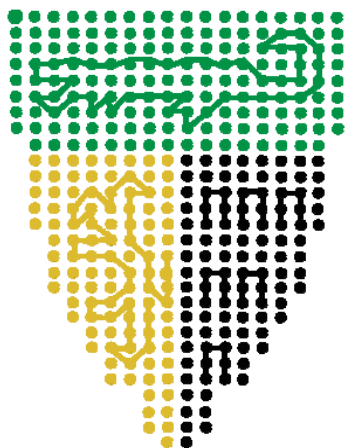


YALE LAW SCHOOL



Information Society Project

Accomplishments

2011-2012

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PEOPLE

Yale Information Society Project

2010 - 2011 Fellows



Faculty Directors

Jack M. Balkin, Director, Information Society Project and Knight Professor of Constitutional Law and the First Amendment

Margot Kaminski, Executive Director, Information Society Project and Lecturer in Law, Yale Law School

Meredith Berger, Program Coordinator and Media Manager

Heather Branch, Administrative Coordinator

Faculty Fellows

- **Ian Ayres**, William K. Townsend Professor of Law
- **Emily Bazelon**, Senior Research Scholar in Law and Truman Capote Fellow for Creative Writing and Law
- **Joan Feigenbaum**, Grace Murray Hopper Professor of Computer Science
- **Owen M. Fiss**, Sterling Professor of Law

- **Linda Greenhouse**, Senior Research Scholar in Law, Knight Distinguished Journalist-in-Residence, and Joseph Goldstein Lecturer in Law
- **David Singh Grewal**, Associate Professor of Law
- **Christine Jolls**, Gordon Bradford Tweedy Professor of Law and Organization
- **Amy Kapczynski**, Associate Professor of Law
- **S. Blair Kauffman**, Librarian and Professor of Law
- **Daniel J. Kevles**, Stanley Woodward Professor of History, Professor of History of Medicine, American Studies, and Law (adjunct)
- **Thomas Pogge**, Leitner Professor of Philosophy & International Affairs
- **Robert C. Post**, Dean and Sol and Lillian Goldman Professor of Law
- **Jessica Pressman**, Assistant Professor of English
- **Carol Rose**, Gordon Bradford Tweedy Professor Emeritus of Law and Organization and Professorial Lecturer in Law
- **Jed Rubenfeld**, Robert R. Slaughter Professor of Law
- **Edmund M. Yeh**, Associate Professor of Electrical Engineering, Computer Science & Statistics

Postdoctoral Fellows

- | | |
|--------------------|----------------------|
| • Rebecca Bolin | • Valarie Kaur |
| • Nicholas Bramble | • Jennifer Keighley |
| • Bryan Choi | • Christina Mulligan |
| • Adam Cohen | • Genevieve Scott |
| • Anjali Dalal | • Wendy Seltzer |
| • Joanna Erdman | • Priscilla Smith |

Visiting Fellows

- Colin Agur
- C.W. Anderson
- Leah Belsky
- Shay David
- Perry Fetterman
- Kate Fink
- Laura Forlono
- Seeta Pena Gangadharan
- Vali Gazula
- Ri Pierce-Grove
- David Karpf
- Eddan Katz
- Bradley Moore
- William New
- Guy Pessach
- Ri Pierce-Grove
- Sharat Raju
- Brad Rosen
- Julia Sonnevend
- Ramesh Subramanian
- Rebecca Wexler
- Christopher Wong
- Shlomit Yanisky-Ravid

Knight Law and Media Scholars

Current Knight Law and Media Scholars:

- Grace Armstrong, 2011
- Giselle Barcia, 2013
- Allyson Bennett, 2013
- Jennifer Bishop, 2012
- Betsy Cooper, 2012
- Laura della Vedova, 2014
- Carlton Forbes, 2014
- Patrick Hayden, 2014
- Behesht Heidary, 2012
- Isia Jasiewicz, 2013
- Mike Knobler, 2012
- Jeremy Kutner, 2012
- David Lamb, 2013
- Jeff Love, 2012
- Max Mishkin, 2014
- Anjali Motgi, 2014
- David Robinson, 2012
- Jane Rosen, 2013
- James Shih, 2013
- Alyssa Work, 2013

Previous Knight Law and Media Scholars:

- BJ Ard, 2010
- Grace Armstrong, 2011
- Sava Berhane, 2012
- Molly Boyle, 2011

- Anjali Dalal, 2010
- Sarah Edelstein, 2010
- Adam Farbiarz, 2010
- Eric Fish, 2011
- Dov Fox, 2010
- Jake Gardener, 2011
- Stephen Gikow, 2011
- Matthew Hengreness, 2012
- Adam Hockensmith, 2012
- Jennifer Jones, 2011
- Patrick Kabat, 2010
- Margot Kaminski, 2010
- Valarie Kaur, 2012
- Noorain Khan
- Maren Klawiter, 2010
- Dror Ladin, 2010
- Nadia Lambek, 2010
- Matthew Maddox
- Alexandra Orme, 2010
- Lisa Larrimore Ouellette, 2011
- Lauren Pardee, 2010
- Sohail Ramirez, 2010
- Doug Rand, 2010
- Michael Seringhaus, 2010
- Kristin E. Shaffer, 2011
- Nabiha Syed, 2010
- Chris Suarez, 2011
- Marisa B. Van Saanen, 2010
- Adrienna Wong, 2010
- Adam Yoffie, 2011

ISP Student Fellows

- Sam Adelsberg, 2013
- Giselle Barcia, 2013
- Allyson Bennett, 2013
- Jennifer Bishop, 2012
- Hannah Brennan, 2013
- Usha Chilukuri, 2013
- Betsy Cooper, 2012
- Deborah Jane Cooper, 2013
- Marissa Doran, 2013
- Navid Hassanpour, 2013
- Behesht Heidary, 2012
- Matthew Hegreness, 2012
- Adam Hockensmith, 2012
- Thomas Huang, 2013
- Isia Jasiewicz, 2013
- Mike Knobler, 2012
- Ally Lamb, 2012
- John Langford, 2014
- Jeremy Kutner, 2012
- David Lamb, 2013
- Jeff Love, 2012
- Max Mishkin, 2014
- Eric Parrie, 2013
- Daniel Pastor, 2013
- Robert Quigley, 2014
- David Robinson, 2012
- Jane Rosen, 2013
- David Ryan, 2013
- James Shih, 2013
- Jonathan Soleimani, 2013
- Nyfees Syed, 2014
- Xiyin Tang, 2012

- Ivy Wang, 2013
- Qian Julie Wang, 2012
- Albert Wong, 2015
- Alyssa Work, 2013

Undergraduate Student Fellows

- Bobby Dresser, YC 2014
- Adi Kamdar, YC 2012
- Aseem Mehta, YC 2014
- Joel Sircus, YC 2014
- Cynthia Weaver, YC 2012

Yale University Affiliates

- Jason Eiseman
- Bonnie Kaplan
- Limor Peer
- Christina Spiesel
- Tina Weiner

Affiliated Fellows

- **Marvin Ammori**, Assistant Professor of Law, University of Nebraska-Lincoln, College of Law
- **Anita Allen-Castellitto**, Professor of Law, University of Pennsylvania Law School
- **Shyam Balganes**, Assistant Professor of Law, University of Pennsylvania Law School
- **Stuart Benjamin**, Professor of Law, Duke Law School
- **Yochai Benkler**, Professor, Harvard Law School
- **Daniel Benoliel**, Professor, University of Haifa School of Law
- **Molly Beutz Land**, Associate Professor of Law, New York Law School
- **Rebekka Bonner**
- **James Boyle**, Professor of Law, Duke Law School
- **Herbert Burkert**, Professor of Information Law, University of St. Gallen. President, Legal Advisory Board (LAB), European Commission
- **Anupam Chander**, UC Davis School of Law

- **Danielle Citron**, Associate Professor of Law, University of Maryland Law School
- **Susan Crawford**, Professor, University of Michigan Law School
- **Eun Chang Choi**
- **Laura DeNardis**, Associate Professor, School of Communications at American University
- **Niva Elkin-Koren**, Lecturer, Faculty of Law, University of Haifa
- **Jeanne Fromer**, Associate Professor of Law, Fordham Law School
- **Michael Froomkin**, Professor of Law, University of Miami School of Law
- **Christine Greenhow**
- **David Singh Grewal**, Harvard Society of Fellows, Harvard University
- **James Grimmelman**, New York Law School
- **Andreas Grünwald**, Assistant to Professor Bernd Holznagel at the Institute for Information, Telecommunications and Media Law, University of Münster, Germany
- **Robert A. Heverly**, Assistant Professor at Albany Law School of Union University
- **David Johnson**, Distinguished Visitor, New York Law School
- **Dan Klau**, Adjunct Professor, University of Connecticut Law School & Attorney, Pepe & Hazard, LLP
- **Douglas Lichtman**, Professor of Law, UCLA Law
- **Christopher Mason**, Assistant Professor of Computational Genomics Department of Physiology and Biophysics and the Institute for Computational Biomedicine Weill Cornell Medical College
- **Ernest Miller**
- **Caio Mario da Silva Pereira Neto**, Getulio Vargas Foundation (FGV) School of Law
- **Beth Noveck**, Associate Professor of Law, New York Law

School

- **Frank Pasquale**, Loftus Professor of Law, Seton Hall Law School; Associate Director of the Gibbons Institute of Law, Science, and Technology, Seton Hall University
- **Guy Pessach**, Lecturer, Faculty of Law, Hebrew University of Jerusalem
- **Arti Rai**, Professor of Law, Duke Law School
- **Nagla Rizk**, Professor of Economics, American University in Cairo
- **Kermit Roosevelt**, Professor, University of Pennsylvania School of Law
- **David Schulz**, Lecturer, Columbia Law School and Partner, Levine, Sullivan, Koch & Schulz, LLP
- **Lea Shaver**, Associate Professor, Hofstra Law School
- **Daniel J. Solove**, George Washington University Law School
- **Victoria Stodden**
- **Madhavi Sunder**, UC Davis School of Law
- **David Thaw**
- **Stefaan Verhulst**, Markle Foundation
- **Kim Weatherall**, University of Queensland, Australia
- **Tal Zarsky**, Lecturer, Faculty of Law, University of Haifa
- **Michael Zimmer**, Assistant Professor, School of Information Studies, University of Wisconsin, Milwaukee

SCHOLARSHIP AND ACADEMIC PRESENTATIONS

Highlights of Fellow Activities

Bryan Choi – Resident Fellow

Articles and Publications

During the spring semester, Bryan Choi successfully placed his article, "The Anonymous Internet," for publication in the Maryland Law Review. He has also been drafting a whitepaper on digital advertising and behavioral tracking, and he has authored several blog posts analyzing recent Supreme Court decisions in the areas of privacy law and patent law.

Organizational Work

In October 2011, Choi organized and moderated a panel on patents and innovation which included speakers from the Patent Trade Office.

In February 2012, Choi organized and moderated a panel on human *Gene Patents* and the high-profile Supreme Court case, *Association for Molecular Pathology v. Myriad Genetics*, involving a challenge against patents claiming isolated DNA molecules associated with breast and ovarian cancer. The panelists included Chris Hansen, the lead attorney for the plaintiff; Richard Marsh, the general counsel for Myriad Genetics, Rochelle Dreyfuss, the Pauline Newman Professor of Law at NYU; and Dr. Allen Bale, the Director of the DNA Diagnostic Lab and Professor of Genetics at the Yale School of Medicine. The video is available at <http://www.law.yale.edu/intellectuallife/genepatents.htm>

Conferences and Speaking Engagements

In June 2012, Choi attended the Privacy Law Scholars Conference, hosted by George Washington University Law School. He was asked by the conference organizers to lead a paper workshop on digital identity and privacy.

Adam Cohen – Resident Fellow

Papers

The Media that Need Citizens: The First Amendment and the Fifth Estate, 85 S.Cal. L. Rev. 1, November 2011;
<http://lawweb.usc.edu/why/students/orgs/lawreview/A.CohenFifthEstate.cfm>

Anjali Dalal – Resident Fellow

Media Publications

Why the Cyber Intelligence Sharing and Protection Act (CISPA) Is Not the Solution to U.S. Cyber Attack Fears, Justia, May 2, 2012;
<http://verdict.justia.com/author/dalal>

CISPA: Steamrolling Civil Liberties, Alternet, May 1, 2012,
http://www.alternet.org/story/155232/cispa%3A_steamrolling_civil_liberties/

A Review of the Cyber Intelligence Sharing and Protection Act (CISPA)
Balkinization April 20, 2012; <http://balkin.blogspot.com/2012/04/review-of-cyber-intelligence-sharing.html>

One Step Forward, Two Steps Back: A Review of the Amendments to CISPA,
Balkinization April 30, 2012; <http://balkin.blogspot.com/2012/04/one-step-forward-two-steps-back-review.html>

Presentations:

Digital Copyright 101 at General Assembly May 9, 2012

Joanna Erdmann - Resident Fellow

Presented Paper: *Procedural Turn in Transnational Abortion Law, Sexual and Reproductive Rights Workshop*, Centro de Investigación y Docencia Económicas, Mexico City, 21 September 2011.

Faculty Facilitator, *Workshop: Courses on Law, Human Rights, and Patient Care, Public Health Program*, Open Society Foundations, Kyrgyzstan, October 31-November 1, 2011.

Harm reduction, human rights, and access to information on safer abortion (published)

Erdman, Joanna N., *International Journal of Gynecology & Obstetrics*, 118 (1), p.83-86, Jul 2012 doi:10.1016/j.ijgo.2012.04.002

ISP Fellows Priscilla J. Smith, Nabiha Syed, David Thaw & Albert Wong, published: *When Machines Are Watching: How Warrantless Use of GPS Surveillance Technology Violates the Fourth Amendment Right Against Unreasonable Searches*, Yale Law Journal Online, October 11, 2011

Margot Kaminski - Executive Director

Publications

“Anti-mask Laws and *Doe*”, a forthcoming article comparing state anti-mask laws to the Doe anonymous online speech standard, presented at the Privacy Law Scholars Conference in June 2012.

Incitement to Riot in the Age of Flash Mobs, 81 U. Cincinnati L. Rev. (forthcoming 2012).

The U.S. Trade Representative's (USTR's) Democracy Problem, 35 Suffolk Transnational L. Rev. (forthcoming 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2043605.

Reading Over Your Shoulder: Social Readers and Privacy Law, 2 Wake Forest L. Rev. Online 13 (2012), <http://wakeforestlawreview.com/reading-over-your-shoulder-social-readers-and-privacy-law>.

Positive Proposals for Treatment of Online Intermediaries, forthcoming in the IP Issue of American University International Law Review, PIJIP Research Paper Series, available at <http://digitalcommons.wcl.american.edu/research/27/>.

Public Interest Analysis of the U.S. Trans-Pacific Partnership Proposal for an IP Chapter, co-authored with Brook Baker, Jimmy Koo, and Sean Flynn, forthcoming in the IP Issue of American University International Law Review (2012), available at <http://infojustice.org/tpp-analysis-november2011>.

“Flash Rob or Protest Movement: The First Amendment and regulating online calls to action”, to be published as a chapter in the forthcoming PUBLIC INTEREST AND PRIVATE RIGHTS IN SOCIAL MEDIA, through Chandos Publishing at Oxford.

An Overview and the Evolution of the Anti-Counterfeiting Trade Agreement, 21 Alb.L.J. Sci. & Tech. 385 (2011). Also available on PIJIP website, cited as a working paper on Lexis.

Popular Media Publications

Lie to Me: The First Amendment in U.S. v. Alvarez, Concurring Opinions, available at <http://www.concurringopinions.com/archives/2012/06/lie-to-me-the-first-amendment-in-us-v-alvarez.html>

Time to Realize that the Obama Administration Doesn't Even Have the Authority to Commit the US to ACTA or TPP, Techdirt, May 16, 2012, <http://www.techdirt.com/articles/20120508/17174518835/time-to-realize-that-obama-administration-doesnt-even-have-authority-to-commit-us-to-acta-tpp.shtml>

Kaminski cited in *Paramount exec faces skeptical crowds on post-SOPA outreach tour*, Ars Technica, April 12, 2012 <http://arstechnica.com/tech-policy/2012/04/humbled-paramount-exec-faces-skeptical-crowds-on-speaking-tour/>.

Kaminski's paper covered in *States Need to Be Cautious with Internet Intermediary Liability*, Maricel Estavillo for IP Watch, March 8 2012 <http://www.ip-watch.org/2012/03/08/paper-states-need-to-be-cautious-with-internet-intermediary-liability/>.

Kaminski quoted in *War is peace, IP negotiations are transparent*, Ars Technica <http://arstechnica.com/tech-policy/2012/03/obama-admin-war-is-peace-tpp-negotiations-are-transparent/>.

Enough, Already: The SOPA Debate Ignores How Much Copyright Protection We Already Have, The Atlantic, February 8, 2012, available at <http://www.theatlantic.com/technology/archive/2012/02/enough-already-the-sopa-debate-ignores-how-much-copyright-protection-we-already-have/252742/>. Article was tweeted over 150 times, and received 600+ comments on Reddit.

Three thoughts on U.S. v. Jones, Concurring Opinions, available at <http://www.concurringopinions.com/archives/2012/01/three-thoughts-on-u-s-v-jones.html>.

Jennifer Keighley – Resident Fellow

Articles and Publications

Can You Handle the Truth? Compelled Commercial Speech and the First Amendment, 15 U. PA. J. CONST. L. (forthcoming 2012).

Siri's Trouble with Finding Abortion Clinics: A Technological Glitch or Something More? ISP Blog Post, Dec. 2, 2011, <http://yaleisp.org/2011/12/siris-trouble-with-finding-abortion-clinics-a-technological-glitch-or-something-more/> (with Nabiha Syed)

Briefs

Brief for Amicus Curiae Scholars from The Information Society Project at Yale Law School in Support of Defendants-Appellants, *Evergreen Association v. New York*, No. 11-2735 (2d Cir. 2011) (written with Cilla Smith)

Reading Groups:

Participated in leading Liberty, Equality, and Compelling Speech: Problems in Reproductive and Reproductive Rights in Europe

Speaking Engagements:

Can You Handle the Truth? Compelled Commercial Speech and the First Amendment Thomson Reuters Speaker Series, Yale Law School, Mar. 23, 2012

Popular Media Publications

Abortion, the First Amendment, and the Fourth Circuit's "Kangaroo Court." It Balkinization July 6, 2012

<http://balkin.blogspot.com/2012/07/abortion-first-amendment-and-fourth.html>.

Christina Mulligan – Resident Fellow

Academic Publications

A Numerus Clausus Principle for Intellectual Property, Tenn. L. Rev. (forthcoming), available at <http://ssrn.com/abstract=2017023>.

Scaling the Patent System, N.Y.U. Ann. Surv. Am. L. (forthcoming) (with Timothy B. Lee), available at <http://ssrn.com/abstract=2016968>.

- Downloaded over 1,000 times on SSRN since March 6, 2012.
- Discussed in the *Wall Street Journal*, *The Guardian*, *The Washington Post*, *The San Francisco Gate*, NPR's *Planet Money* blog, and *TechDirt*.

Popular Media Publications

Let's Ditch Software Patents, Wash. Post, Apr. 22, 2012, at B5.

The Problem With Software Patents? They Don't Scale, ARS TECHNICA, <http://arstechnica.com/tech-policy/news/2012/03/opinion-the-problem-with-software-patents-they-dont-scale.ars> (Mar. 8, 2012) (with Timothy B. Lee).

Court Brief

Authored Supreme Court amicus brief in *Mayo Collaborative Servs. v. Prometheus Labs*, No. 10-1150, on behalf of the Cato Institute, Reason Foundation, and Competitive Enterprise Institute, <http://www.cato.org/pubs/legalbriefs/Mayo-brief.pdf>.

Speaking Engagements and Workshops

A Numerus Clausus Principle for Intellectual Property, 5th Annual Junior Scholars in Intellectual Property Workshop, Michigan State University College of Law, May 31, 2012.

Scaling the Patent System, Patent Conference, Boston College Law School, May 12, 2012.

Changing the Conversation about Software Patents in a Post-SOPA World, Innovate/Activate Conference, Berkeley, CA, Apr. 20, 2012.

Patent Scalability (Surprisingly Free with Jerry Brito podcast, April 3, 2012), available at <http://surprisinglyfree.com/2012/04/03/christina-mulligan>.

A Numerus Clausus Principle for Intellectual Property, Association for Law, Property, & Society 3rd Annual Meeting, Washington, DC, Mar. 2, 2012.

Digital Copyright, Start-Ups and the Law Reading Group, Yale Law School, Feb. 14, 2012.

A Numerus Clausus Principle for Intellectual Property, Works-in-Progress Intellectual Property (WIPIP) Colloquium, Institute for Intellectual Property & Information Law, University of Houston Law Center, Feb. 11, 2012.

Mimesis and Copyright, Quinnipiac University, Jan. 20, 2012.

A Numerus Clausus Principle for Intellectual Property, Federalist Society 14th Annual Faculty Conference, Washington, DC, Jan. 6, 2012.

Discussing the Effects of Cambridge University Press v. Patton, Collaborative Learning Center, Yale University, Nov. 8, 2011.

David Robinson – Student Fellow

"Participated in the International Open Government Data Conference held on July 10–12, 2012, at World Bank Headquarters in Washington, D.C., hosted by the U.S. General Services Administration, home of the United States Data.gov team, and the World Bank."

Academic Publications

Co-authored with Harlan Yu on *The New Ambiguity of 'Open Government'* forthcoming in UCLA Law Review, guest speaking at the World Bank

Co-authored with Harlan Yu *Apertura de Datos: Primeras Lecciones Para el Diseño de Políticas* published in a book of policy advice published by ECLAC, the United Nations Economic Commission for Latin America and the Caribbean

Popular Media Publications

Inside Views: To Stem Infringement, Block Money – Not Information
Intellectual Property Watch October 18, 2011,

A Possible Constitutional Caveat to SOPA Freedom to Tinker November 15, 2011

US Chamber Urges More IP Protection As Job Booster; Tech Supporters Disagree Intellectual Property Watch, July 9, 2011, contributor

Podcast:

David Robinson on Rogue Websites and Domain Seizures,
Surprisingly Free, October 11, 2011;

<http://surprisinglyfree.com/2011/10/11/david-robinson/>

Genevieve Scott – Resident Policy Fellow

Summer 2012, Genevieve Scott drafted an amicus brief in a case involving GPS tracking by the government of its own employees

And with Cilla Smith, a brief defending the privacy rights of women to use in vitro fertilization in Costa Rica

Wendy Seltzer - Resident Fellow

Publications:

"Software Patents or Software Development," forthcoming 2012, Brooklyn Law Review.

Presentations:

Privacy, Option Value, Feedback, Privacy Law Scholars Conference, June 7-8, 2012

Keynote, *Defending the Open Net*, ORGcon, London, March 24, 2012

Openness in the Smartphone Ecosystem, Whittier Law Review Symposium, Nov 4, 2011

Android's Openness (keynote) and *Leveraging Openness*, Android Open (O'Reilly), San Francisco, Nov. 2011

CONFERENCES

Information Society Project at Yale Law School

Global censorship conference

Yale Law School

featuring panels including:

The Means of Change, Familiar and New
Old and New Forms of Censorship
Technical Architectures of Censorship
Case Studies of Censorship
Technical Methods of Circumventing Censorship
Legal Solutions to Censorship
New Controversies in Censorship

**Friday, March 30 -
Sunday, April 1, 2012**

Brought to you by Thomson Reuters and
the Abrams Institute for Freedom of Expression

GLOBAL CENSORSHIP

YALE LAW SCHOOL

Room 127

March 30, 2012 – April 1, 2012

***Brought to you by the Abrams Institute for Freedom of Expression,
and the Thomson Reuters Initiative***

Censorship has long been a means to silence “harmful speech.” What governments consider to be “harmful” has varied across time and regime. However, whether it's the passage of the Alien and Sedition Acts or the more overt uses of force such as in Tiananmen Square, governments have shown time and time again that they are capable of deploying whatever means necessary to eliminate so called “harmful speech.”

The ubiquity of the Internet has added an additional layer of complexity to issues of government censorship. It is both an unrivaled tool for speech and an incredible tool for monitoring and surveillance. This conference will consider how censorship has changed in a networked world, exploring how networks have altered the practices of both governments and their citizens. Panels will include discussions of how governments can and do censor and how speakers can command technical and legal tools to preserve their ability to speak. The conference will conclude with a discussion of new controversies in censorship, including laws designed to prevent online bullying and intellectual property infringement.

FRIDAY MARCH 30, 2012

3:15-4:45

The Means of Change, Familiar and New

*(co-sponsored by the Orville H. Schell, Jr. Center for
International Human Rights)*

In the popular story of the political upheavals in the Middle East and North Africa, information technology stands out as the new factor that was critical to rapid mass mobilization for demanding change. The media have been credited with making popular demands for

change contagious. Enthusiasts for the potential of technology to foster progressive change have labeled these apparently sudden developments a Facebook revolution. Governments responded by seeking to curtail the use of mobile phones and the Internet. What role has technology played in igniting, sustaining and shaping recent political changes in the Arab world?

- Anupam Chander, Professor of Law, University of California, Davis and Director, California International Law Center
- Rebecca MacKinnon, Bernard L. Schwartz Senior Fellow, New America Foundation
- John Pollock, journalist

5:00-6:30

Keynote Lecture

(co-sponsored by the Orville H. Schell, Jr. Center for International Human Rights)

- Irwin Cotler, Canadian Parliament, former Attorney General of Canada

SATURDAY MARCH 31, 2012

10:00 - 11:30 Panel One: Old and New Forms of Censorship

Years ago, activists met in person to plan protests and quietly shared subversive texts. Now, events can be planned over social networking sites, and arguments for change are posted online. How have governments responded to these changes? How have activist practices and governments' reactions changed the way we conceptualize censorship?

- Jack Balkin, Yale Law School
- Yochai Benkler, Harvard Law School
- Navid Hassanpour, Yale Political Science Department
- Rebecca MacKinnon, Bernard L. Schwartz Senior Fellow, New America Foundation

11:45 – 1:15 Panel 2: Technical Architectures of Censorship

There are a number of choke points across the Internet and a number of different censorship mechanisms that can be deployed at various points across the network. Censorship can be executed at the router level, the Internet Service Provider (ISP) level, the Internet Content Provider (ICP) level, or the device level. Additionally, countries can employ a number of different technologies at each level. This panel will explore the many technical options for censorship and the strategic value of different choices.

- Laura DeNardis, Associate Professor of Communication at American University, and Affiliated Fellow, Information Society Project at Yale Law School
- Nagla Rizk, American University in Cairo
- Hal Roberts, Fellow at Berkman Center for Internet & Technology
- Ashkan Soltani, Independent Researcher and Consultant on Privacy and Security

2:15 – 3:45 Panel 3: Case Studies of Censorship

In the wake of censorship both domestically and abroad, many questions emerged about how the censorship was executed, what effects it had, if and how activists were able to route around the it, and how, if it all, it was eventually stopped. This panel will explore recent instances of censorship in the United States, Egypt, Syria, Brazil, and India and the common themes and important differences that emerged.

- Sherwin Siy, Deputy Legal Director and the Kahle/Austin Promise Fellow at Public Knowledge
- Lina Attalah, Journalist, Managing Editor of Al-Masry Al-Youm
- Anas Qtiesh, Blogger, Editor of Global Voices

- Carlos Affonso Pereira de Souza, Vice-Coordinator of the Center for Technology & Society (CTS) at the Fundação Getulio Vargas (FGV) Law School
- Rishabh Dara, Researcher at Indian Institute of Management, Ahmedabad

4:00- 5:30

Panel Four: Technical Methods of circumventing Censorship

New technology may provide governments with new tools to censor, but it also creates opportunities for speakers and “hactivists” everywhere. How can individuals evade identification online and access blocked content? Can activists circumvent attempts to shut down the internet during periods of political unrest? What new methods are being developed to preserve free speech online?

- Roger Dingledine, The Tor Project
- Peter Fein, Telecomix
- Alex Halderman, University of Michigan, Dept. of Computer Science
- Sascha Meinrath, Open Technology Initiative Director, New America Foundation
- Wendy Seltzer, Senior Fellow, Information Society Project at Yale Law School

SUNDAY, APRIL 1, 2012

9:30 – 11:00

Panel 5: Legal Solutions to Censorship

Given the way censorship technologies have slowly crept into acceptable use because of concerns like piracy, child pornography, or national security, there is much debate about the role and capacity of law in combatting these new, digital forms of government censorship, domestically and internationally. This panel will discuss if and how legal solutions to censorship can be deployed most effectively.

- Derek Bambauer, Brooklyn Law School
- Jim Dempsey, Vice President of Public Policy at the Center for Democracy and Technology
- Molly Land, New York Law School
- Linda Lye, ACLU Northern California
- Jillian York, Director for International Freedom of Expression at the Electronic Frontier Foundation

11:15 – 12:45 Panel Six: New Controversies in Censorship

Does new technology change the appropriate scope of free expression rights? Can policing intellectual property infringement burden free speech interests? Does surveillance ever have a censoring effect? This panel will wrestle with whether a variety of government activities constitutes inappropriate censorship or necessary actions to protect the public interest.

- Mark MacCarthy, Vice President for Public Policy, Software and Information Industry Association; Adjunct Professor, Communication, Culture and Technology Program, Georgetown University
- Preston Padden, Senior Fellow at the Silicon Flatirons Center and an Adjunct Professor at the University Of Colorado's Law School and Interdisciplinary Telecommunications Program
- David Post, Temple University, Beasley School of Law
- Christopher Soghoian, Graduate Fellow, Center for Applied Cybersecurity Research, Indiana University

Constitutional Interpretation and Change: A Conference on Jack Balkin's *Living Originalism*

April 27-28, 2012

Register at

www.constitutionalinterpretation.eventbrite.com

Yale Law School
Room 127

A Discussion Between Legal Scholars and Journalists:

Bruce Ackerman
Akhil Amar
Emily Bazelon
Jack Balkin
Joan Biskupic
Sujit Choudhry
Justin Driver
Garrett Epps
Barry Friedman
Linda Greenhouse
Michael Greve
Sanford Levinson
Adam Liptak
Dahlia Lithwick
Michael McConnell
Robert Post
Jeffrey Rosen

Reihan Salam
Kim Scheppelle
Charlie Savage
Neil Siegel
Reva Siegel
Sara Aronchick Solow
Steven Teles
Matthew Yglesias

Pre-Registration is Required

Register at:

www.constitutionalinterpretation.eventbrite.com

Deadline: April 20, 2012

*Sponsored by the Oscar M. Ruebhausen Fund, Yale Journal of Law & the Humanities
and by the Information Society Project at Yale Law School*

**CONSTITUTIONAL INTERPRETATION AND CHANGE:
A CONFERENCE ON JACK BALKIN'S LIVING ORIGINALISM**

YALE LAW SCHOOL

ROOM 127

REGISTRATION ROOM 122

APRIL 27, 2012 – APRIL 28, 2012

Living Originalism offers a theory of constitutional interpretation that is both faithful to the Constitution's original meaning and consistent with a living Constitution; it argues that the best versions of originalism and living constitutionalism are compatible rather than opposed. The book also explains how legitimate constitutional change occurs in the American constitutional system through the efforts of the political branches, political parties, social movements, and the institutions of civil society.

A distinctive feature of this conference is its focus on journalism as a conduit of American constitutional culture and on journalists as important players in the construction of public opinion about the Constitution. The conference includes panels of both constitutional scholars and journalists who cover constitutional issues.

Living Originalism argues that the Constitution changes over time because of continuous debates in public life about what the Constitution means. Journalists play a key role in discussing and explaining constitutional controversies before the public, including debates about constitutional interpretation. Because their work shapes and educates public opinion, journalists are an indispensable element of the long-term processes of constitutional change. The Internet and digital media, which blend traditional legal experts, journalists, commentators, and the general public, have, if anything, enhanced these features of American constitutional culture.

Friday, April 27, 2012

9:00am Introduction

9:15am Panel One: Living Originalism: A Contradiction in Terms?

- Neil Siegel (Duke): Jack Balkin's Rich Historicism and Diet Originalism: Health Benefits and Risks for the Constitutional System
- Justin Driver (Texas, New Republic): Does Originalism Have What Liberals Want?
- Jeffrey Rosen (GW, New Republic): Substance versus Method in Constitutional Interpretation
- Moderator/Discussant: Robert Post (Dean, Yale Law School)

11:15am Panel Two: Journalism and Constitutional Interpretation

Living Originalism argues that the standard case of constitutional interpretation is interpretation by citizens, not by courts, and that all Americans have the duty to interpret the Constitution for themselves. It also argues that the distinction between originalism and living constitutionalism is a false choice.

How do or should journalists think about constitutional interpretation (as opposed to judges and courts)? How do they explain competing theories of constitutional interpretation to the public? How do they interpret the Constitution themselves? Who do they talk to about constitutional interpretation? What do they read?

- Joan Biskupic (Reuters News)
- Linda Greenhouse (Yale, NY Times)
- Charlie Savage (NY Times)
- Dahlia Lithwick (Slate)
- Moderator/Provocateur: Garrett Epps, (University of Baltimore, American Prospect)

2:00pm Panel Three: Constitutional Construction

- Bruce Ackerman (Yale): Deconstructing Constitutional Construction
- Reva Siegel (Yale): Sex Equality and Constitutional Change: What Movement/Party Conflict Explains and Originalism Does Not
- Michael McConnell (Stanford): Originalism and Precedent
- Barry Friedman (NYU) and Sara Aronchick Solow (Clerk 3rd Cir.): How to Read the Constitution
- Moderator/Discussant: Sanford Levinson (Texas)

4:00pm Panel Four: Journalism and Constitutional Change

Living Originalism argues that constitutional change outside the amendment process enjoys democratic legitimacy because social and political mobilizations, political parties, civil society organizations, and litigation campaigns, reshaping the boundaries of what is considered reasonable or plausible, move arguments from "off the wall" to "on the wall," and influence constitutional culture..

Journalism and media are important aspects of civil society. What role do journalists and the profession of journalism play in processes of constitutional change?

- Emily Bazelon (Yale, Slate)
- Barry Friedman (NYU)
- Reihan Salam (National Review Online, The Daily)
- Jeffrey Rosen (GW, New Republic)
- Moderator/Provocateur: Steven Teles (Johns Hopkins)

Saturday, April 28th

9:15am Panel Five: Comparative and Historical Perspectives on Living Originalism

- Sujit Choudhry (NYU): “Our Law” and Comparative Constitutional Law: Living Originalism and Dialogical Engagement
- Kim Scheppele (Princeton): Jack Balkin is an American
- Akhil Amar (Yale): The Yale School of Constitutional Theory
- Michael Greve (American Enterprise Institute): What was Originalism?
- Moderator/Discussant: Linda Greenhouse (Yale, NY Times)

11:15am Panel Six: Journalism and the Constitution outside the Courts

Living Originalism argues that "living constitutionalism" is an elaborate interaction between constitutional arguments made within the courts and constitutional arguments made outside of them; it also argues that much constitutional change is driven by political and cultural forces beyond the judiciary.

How do journalists engage (or affect) the public in understanding the Constitution outside of the courts? This includes not only the work of Congress and the President, but state courts, political parties, NGOs, social movements, and public opinion. What is the difference between covering the courts and covering the Constitution?

- Emily Bazelon (Yale, Slate)
- Linda Greenhouse (Yale, NY Times)
- Adam Liptak (NY Times)
- Charlie Savage (NY Times)
- Moderator/Provocateur: Reva Siegel (Yale)

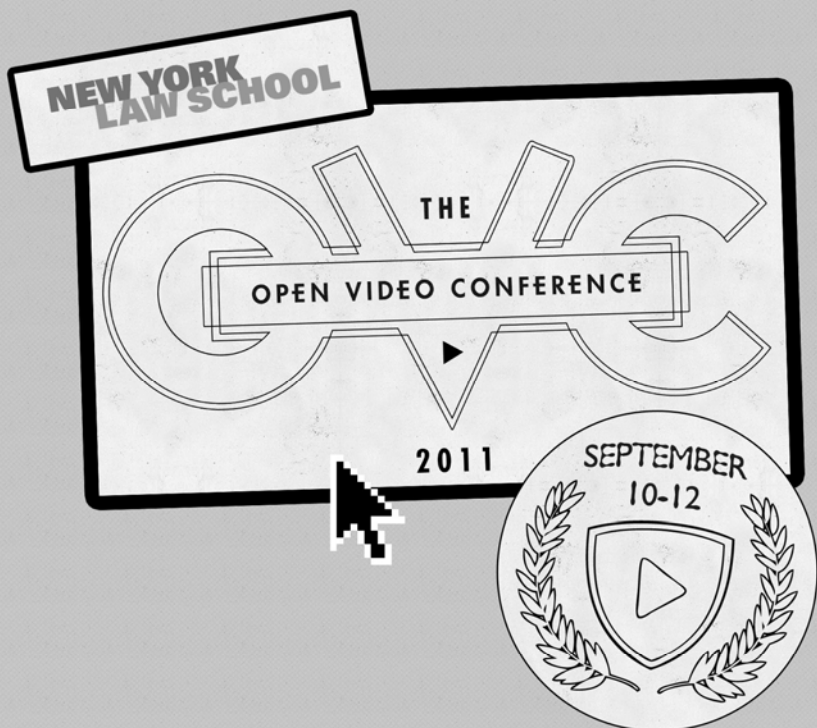
1:00 pm Lunch: Author's Question Time

A panel of journalists asks the author difficult questions over lunch

- Jack Balkin

Questioners/Interrogators:

- Irin Carmon (Salon)
- Adam Liptak (NY Times)
- Armando Llorens (Daily Kos)
- Reihan Salam (National Review Online, The Daily)



THE
OPEN VIDEO
ALLIANCE

Open Video Conference:

The Information Society Project helped to support the New York Law School Open Video Conference. ISP Fellow and Law & Media Program Director Nick Bramble led two seminars with Marvin Ammori titled: “Making the Map: A visual Representation of the Web Video Landscape.”

Description of Workshop: Our goal in this multi-part workshop is to make a comprehensive infographic with the help of a graphic artist. The graphic will illustrate how different layers of the open video ecosystem, from devices and bandwidth, to software and standards, and filmmaking and distribution, fit together—and what kinds of legal, competitive, or creative constraints are in place at each layer. As we draw this map, we will speak with a range of video makers, distributors, investors, and developers to address the following questions:

Who makes video? Who licenses video, and on what terms? Who aggregates and distributes video? How are different kinds of video encoded? How does video travel across the Internet and other kinds of networks? What roles do backbone providers and content delivery networks play in the process of transmitting video on the Internet? How much control do ISPs have over users’ ability to access video? Who is capable of exercising political control over video? And what can you do with video once it gets to a device?

The goal of these sessions is to map out the layers of people and technologies and licensing arrangements that video passes through on its way from the camera (or the computer) to the end user. In creating this map and refining our understanding of the economics and the infrastructure of the open video ecosystem, we will develop a better sense of how to interact with a variety of public and private design levers important to the future of open video.

SATURDAY, SEPTEMBER 10

	W220	W320	WA010	WA300	W302	Faculty Commons	W303
8:00—9:30	Registration & Coffee						
9:30—10:00	Keynote: Jillian York, Director of International Freedom of Expression (EFF)						
10:00—10:30	Lightning talk: Jonathan McIntosh, Rebellious Pixels						
10:30—12:00	Alternative Copyright Education	Making a Remix Maker	Designing Storyworlds	Visual Privacy? Visual Anonymity?		Open Media Developers plenary	Using Open Source In Commercial Context
12:00—1:30				Validating and Verifying Citizen Video	The Many Faces of Open	WebRTC and HTML5	Roll Your Own Video CMS
1:30—2:15	Catered lunch						
2:30—4:00	Defensive Patent License	New Currencies and Compensation Models	Technologies for Anonymization: SecureSmartCam	Connected Documentary	Video Archives: Life After Production	Fun with WebGL, the Audio API, and more	The Missing Link: Flash to HTML5
4:00—5:30						Standards for Video Accessibility	AV Device Inputs
5:45—6:15	A thought-provoking talk by Cindy Gallop: Make Love, Not Porn						
6:30—8:00	Screening: Life in a Day (popcorn & drinks)						

SUNDAY, SEPTEMBER 11

	W220	W320	WA010	W300	W302	Faculty Commons
9:30—10:30	Registration & Coffee					
10:30—11:00	Keynote: Gigi Sohn, President & Co-Founder, Public Knowledge					
11:00—11:30	Brewster Kahle and Tracey Jacquith present the 9/11 Archive at Archive.org					
11:30—1:00	Intro to popcorn.js and pitch session	Is the Web Safe for Expression?	Designing a Next-Generation TV Interface	Making the Map: bandwidth, backbone peering, cloud & device	Scalable HTML5 players skill share	Standards for HTTP adaptive streaming
1:00—2:00	Catered lunch					
2:00—3:30	Popcorn.js plugin sprint	Robolawyers for the Open Web: DMCA automation and more	Mobile Content Neutrality	Making the Map: logical, software & standards	Database Driven Narratives	Standards for Browser Video Playback Metrics
3:30—5:00			The Rebecca Black Story	Making the Map: content & distribution layer	Oral History Best Practices	Open Video Editors
5:00—5:30	Keynote: Marvin Ammori, Legal Fellow, New America Foundation Open Technology Initiative					
5:30—7:30	Showcase and beer — share your work from the weekend and relax					



INNOVATE / ACTIVATE 2.0

April 20-21, 2012 University of California, Berkeley

Innovate/Activate 2.0

The Information Society Project (ISP) supported the second Innovate/Activate conference at University of California, Berkeley.

Margot Kaminski, Executive Director of the ISP presented on the U.S Trade Representatives' I.P. Policy.

Description: The Office of the U.S. Trade Representative (USTR) has been creating bad international IP law for years, as part of U.S. trade policy. Laws created by USTR stop the worldwide distribution of lifesaving medicines, and threaten civil liberties, both online and off. For example, USTR was the driving force behind the Anti-Counterfeiting Trade Agreement (ACTA), which is now being widely rejected in Europe. This panel will discuss USTR's latest round of bad international law.

Christina Mulligan, ISP Fellow, presented on Software Patents.

Description: Ever since the takedown of SOPA and PIPA, policy makers and others have been paying increased attention to technology policy. During the same time, the problems surrounding software patents -- thickets that hinder innovation and trolls who threaten suits, for example -- have grown. So what can we take from the SOPA fight to address these growing problems and bring the fight to software patents?

Nick Bramble, ISP Fellow and Law and Media Director, presented on Tech Policy Advocacy in Administrative Rulemaking.

Description: Outside of Washington, advocates frequently focus their intellectual property and technology policymaking efforts on various legislative and judicial arenas. Often overlooked, however, are important opportunities to shape IP and technology policy in rulemakings at federal administrative agencies like the USPTO, the Copyright Office, the FCC, and the FTC. We'll highlight success stories from policy advocates who have navigated the complex landscape of federal rulemakings and returned to tell the tale.

		Registration / Breakfast			
1:0	9:00 - 9:45 AM	Opening Remarks			
2:0	9:45 - 10:00 AM				
	10:00 - 11:00 AM	Workshop Keynote - The Proactive Agenda: What Does It Look Like?			
2:1	11:00 - 12:00 PM	Workshop Breakout	Workshop Breakout	Workshop Breakout	Workshop Breakout
		Banatao Auditorium	Room 250	Room 254	Room 240
		Keeping It Global: Transnational Awareness and Organizing	Checking the Gender Box: How Gender Matters in Tech Activism	OER From the Core: Changing Institutional and Governmental IP Policies	Building a Bridge Over the Beltway: The Who, What, Why & How of Tech Policy Advocacy in Administrative Rulemakings
3:0	12:00 - 1:00 PM				
		Workshop: Using Emerging Technologies / Platforms to Run a Campaign			
		Lunch			
4:0	1:00 - 2:00 PM				
	2:00 - 3:00 PM	Lunch Keynote - Trademark Bullies, Transnational Boundaries, and Anti-Brand Activism			
4:1	3:00 - 4:00 PM	Continuing the Digital Civil Rights Conversation	USTR: WTF?	Funding Online Activism	How Online Activists Can / Should Protect Themselves from IP Threats
		OER From the Edge: MOOCShop			
	4:00 - 4:15 PM	Break			
5:1	4:15 - 5:15 PM	Future Threats to Future Tech	Copyright Exceptions and Limitations for Education, Libraries, and Research	Robolawyring for the Open Interwebz	The Taxonomy of the Perfect Test Case
6:1	5:15 - 5:30 PM	Conference Close			
		Unconference			



YALE LAW SCHOOL
The Information Society Project

LAW AND MEDIA

**Data Journalism Panel:
New Tools and New Challenges
for Accessing Information**



9:30 am - 3:30 pm
Friday, March 9
Room 122
Yale Law School

Register to attend:
www.datajournalism030912.eventbrite.com

Panel 1: Data Journalism Forms and Practices

Reginald Chua, Editor, Data and Innovation, Thomson Reuters

Amanda Cox, Graphics Editor, New York Times

Simon Ferrari, Video Game Designer and Doctoral Researcher in Digital Media,
Georgia Institute of Technology

Katharine Jarmul, Lead Developer, Loud3r

Dafna Linzer, Senior Investigative Reporter, ProPublica

Panel 2: The Influence of Data on News Work

C.W. Anderson, Assistant Professor of Media Culture, College of Staten Island (CUNY)

Brian Boyer, News Applications Editor, Chicago Tribune

Hannah Fairfield, Graphics Director, Washington Post

Matt Stiles, Data Journalist, NPR

ACTIVITIES AND SPECIAL EVENTS

Knight Law & Media Speaker Series

Speakers:

November 10

Alexis Madrigal, Senior Editor at the Atlantic

“Journalism and Advocacy”

December 8

Brian Stelter, reporter at the New York Times

“Social Media and the Newsroom”

January 27

Susan Buckley, Partner at Cahill, Gordon & Reindell, LLP

"The Espionage Act and The Press: From The Pentagon Papers to Wikileaks."

February 16

Timothy B. Lee, a journalist at Ars Technica and an adjunct scholar at the Cato Institute

“How the Internet Is Transforming Journalism”

April 4

Irin Carmon, staff writer at Salon.com, where she focuses on reproductive rights, women, and politics.

A discussion on national controversies in reproductive rights and how they have been driven and shaped by the Internet, from progressive online news to social media

YALE INFORMATION SOCIETY

PROJECT LUNCH SPEAKER SERIES

Thomson Reuters ISP Speaker Series

The Thomson Reuters ISP Speaker Series on Information Law and Information Policy hosts leading experts in the field of information law, speaking about their latest paper or projects. The series occurs weekly.

Fall 2011 Speaker Series

September 16

Wendy Seltzer, *Software Patents and/or Software Development*

September 26

Susan Freiwald, *Is Big Brother Tracking You: Location Data and Fourth Amendment Privacy*

September 30

Cherian George, *Singapore's Suspended Spring: Media Control and Authoritarian Consolidation*

October 11

Daniel Solove, *Nothing to Hide: The False Tradeoff Between Privacy and Security*

October 21

Woody Hartzog, *The Case for Online Obscurity*

October 28

Damian Schofield, *Why Doesn't it Look Like it Does on Television? The Presentation of Forensic Evidence Using Digital Technologies*

November 4

Christina Raasch, *The Option to Be Open and How It Increases Social Welfare*

November 11

Madhavi Sunder, *Technologies of Enlightenment: Upending Authority, from Common Sense to Google*

November 18

Sonia Katyal, *Contrabrand: Art, Advertising and Property in the Age of Corporate Identity*

December 2

Adrian Johns, *The Intellectual Property Defense Industry and the Crisis of Information*

December 9

Jeffrey Alexander, *Barack Obama and the Performance of Politics: The Campaigner and the President.*

Spring 2012 Speaker Series

February 3

Patricia Aufderheide, *Reclaiming Fair Use: How to Put Balance Back in Copyright*

February 10

Jason Mazzone, *Copyfraud and Other Abuses of Intellectual Property Law*

February 24

Adam Kolber, *Smooth and Bumpy Laws*

March 1

Andrew Bridges, *Copyright Law as Sausage: How It's Made and What's in It*

March 23

Jennifer Keighley, *Can You Handle the Truth? Compelled Commercial Speech and the First Amendment*

April 5

Lina Srivastava, *The Design of Narrative Platforms for Social Change*

April 20

Dov Fox, *Compelling Interest Specification and the State's Interest in Potential Life*

April 23

Laura Handman, *Destination Defamation: the Rise and Fall (?) of Libel Tourism*

YALE INFORMATION SOCIETY PROJECT “IDEAS LUNCHES”

THOMSON REUTERS IDEAS LUNCHES

The ISP facilitates a series of “ideas lunches” that meet weekly. The ideas lunches consist of an informal gathering of students, fellows, and guest speakers to forge new ideas related to emerging issues in media law and technology. During this year (2011-2012), informal guest speakers led animated discourses on a wide range of subjects, including:

Barton Beebe, Professor, New York University Law School, on “Aesthetic Progress in Copyright”

Prof. Anupam Chander, Professor, University of California, Davis, on “IP and the Silicon Valley”

John Collins, Google, on “Cloud Computing”

Betsy Cooper, ISP Student Fellow, on “Robot Judges”

Joanna Erdman, ISP Fellow, on “Access to Safer-use Information”

J. Alex Halderman, Assistant Professor of Computer Science, University of Michigan, on “Internet Censorship”

Eitan Hirsch, Assistant Professor, Political Science, Yale University, on “Political Strategy and Databases”

Paul Allen Levy, Public Citizen, on “Trademark and Free Expression”

Prof. R. John Williams, Assistant Professor of English, Yale University, on “The History of the Book”

Prof. Jed Rubinfeld on “The Anonymity of the Streets”

Tom Glaisyer, Knight Media Policy Fellow at New America, on “Democracy and Media Models”

Prof. Ian Ayres on “Information Escrows”

Colin Agur, ISP Visiting Fellow, on the history of wiretapping

Prof. Christine Jolls on “Privacy and Prior Consent”

Dr. Nagla Rizk and journalist **Lina Attalah** on Egyptian FOI law

Irin Carmon of Salon on “Online Activism and New Media”

Becky Bolin on “Internet gambling”

Kate Fink on "Journalistic Sources in the Age of Digital News: a Study of Data-Driven Sourcing and its Effects on News Work Practices and Production."

Wendy Seltzer on “Privacy Options”

Anjali Dalal and **Nick Bramble** on the history and future of municipal broadband as a viable alternative to traditional broadband access models.

Christina Mulligan on “Tech Reg and Freedom of the Press Clause”

Margot Kaminski, **Genevieve Scott** on “Location Tracking”

Seeta Gangadharan on “Surveillance”

Cilla Smith and **Jen Keighley** on “Reproductive Rights”

ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

Speakers:

January 27

Susan Buckley

“The Espionage Act and the Press: From the Pentagon Papers to Wikileaks”

April 5

Lina Srivastava

“The Design of Narrative Platforms for Social Change”

April 23

Laura Handman

“Destination Defamation: the Rise and Fall (?) of Libel Tourism”

Events:

February 28

Interrogation After 9/11, Censorship, and Journalism

March 21

Page One Screening

March 30 – April 1

Global Censorship Conference

PROGRAM FOR THE STUDY OF REPRODUCTIVE JUSTICE

Events:

April 12

A discussion on pro-choice and reproductive rights

April 13

Conference on First Amendment Issues in Regulating Reproduction

April 19

A discussion of whether Katniss from the Hunger Games is a feminist hero

Clinical:

Briefs:

Brief of Amici Curiae in Support of the Respondent United States v. Jones

Brief for Amicus Curiae in Support of Defendants-Appellants Evergreen Ass'n v. City of New York

Brief for Amicus Curie in support of the Petition Associate for Molecular Pathology v. Myriad Genetics

Journal Articles:

When Machines are Watching: How Warrantless Use of GPS Surveillance Technology Violates the Fourth Amendment Right Against Unreasonable Searches, Yale Law Journal Online, October 11, 2011;
<http://www.yalelawjournal.org/the-yale-law-journal-pocket-part/constitutional-law/when-machines-are-watching-how-warrantless-use-of-gps-surveillance-technology-violates-the-fourth-amendment-right-against-unreasonable-searches/>

PROGRAM FOR THE STUDY OF REPRODUCTIVE JUSTICE Conference

First Amendment Issues in Regulating Reproduction

Date: Friday, April 13, 2012

A symposium that brought together pro-choice litigators, academics, and city attorneys to examine First Amendment limitations on the state's ability to compel speech about reproductive health services. Compelled speech laws range from city ordinances that compel anti-choice crisis pregnancy centers to post signs disclosing what services they provide and whether they have medical professionals on staff, to laws requiring abortion providers to give patients information sometimes false -- designed to encourage them to carry their pregnancies to term, to laws that require abortion providers to perform, display, and describe the results of an ultrasound of the fetus.

10:00 - 11:45 am Panel 1

Compelled Ideological Speech or Truthful Dissuasion: The Case of Mandatory Physician Speech and Transvaginal Ultrasounds

Panelists:

Andy Beck, Staff Attorney, Reproductive Freedom Project, ACLU
Julie Rikelman, Litigation Director, Center for Reproductive Rights

Moderator:

Priscilla Smith, Senior Fellow, Program for the Study of Reproductive Justice in the ISP at Yale Law School

12:30 - 2:15pm Panel 2

Compelled Ideological Speech or Fraud Prevention: The Case of
Mandatory Disclosures by Crisis Pregnancy Centers

Panelists:

Erin Bernstein, Deputy City Attorney, City and County of San
Francisco

Suzanne Sangree, Chief Solicitor, City of Baltimore Law
Department

Stephanie Toti, Senior Staff Attorney, Center for Reproductive
Rights

Moderator:

Jennifer Keighley, Resident Fellow, Program for the Study of
Reproductive Justice in the ISP at Yale Law School



YALE LAW SCHOOL

The Information Society Project

The Program for the Study of Reproductive Justice

FIRST AMENDMENT ISSUES in Regulating Reproduction



April 13, 2012
10 am - 2:30 pm
Room 129
Yale Law School
Lunch is provided

10:00 - 11:45am Panel 1

Compelled Ideological Speech or Truthful Dissuasion: The Case of Mandatory Physician Speech and Transvaginal Ultrasounds

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Moderator:

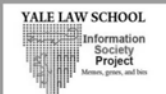
Jennifer Keighley, Resident Fellow, Program for the Study of Reproductive
Justice in the ISP at Yale Law School

Ewing Marion
KAUFFMAN
Foundation

KAUFFMAN ROUNDTABLE
ON PATENT REFORM & INNOVATION
November 7, 2011 • Yale Law School

Hosted by
YALE LAW SCHOOL
Information
Society
Project
Memes, genes, and bits





Yale Law School
Information Society



What does antitrust law mean under the Obama Administration ?

**The AT&T/T-Mobile merger, spectrum, and
competition in mobile wireless infrastructure**

**Thursday, December 1, 2011
2:30 - 4:30 p.m.**

Yale Law School • Room 124

Panelists:

Susan Crawford, Cardozo Law School

Harold Feld, Public Knowledge

Harold Furchtgott-Roth, former FCC Commissioner

Jonathan Askin, Brooklyn Law School

Moderator:

Nicholas Bramble, Yale Law School



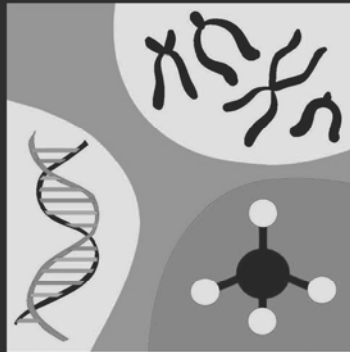
YALE LAW SCHOOL

The Information Society Project

Gene Patents: Advancing Medicine or Capturing Humanity?

12:00 - 2:00 pm
Tuesday, February 14
Room 129
Yale Law School

Lunch will be served



Panelists:

Chris Hansen, Staff Attorney, ACLU
Richard Marsh, General Counsel, Myriad Genetics
Rochelle Dreyfuss, Pauline Newman Professor of Law, NYU
Dr. Allen Bale, Director of the DNA Diagnostic Lab and
Professor of Genetics, Yale School of Medicine

Moderator:

Bryan Choi, Thomson Reuters ISP Fellow, Yale Law School





The Media Freedom and Information Access Clinic
and Information Society Project at Yale Law School

Present:

FOIA Boot Camp

Interested in:

Government Transparency?

Researching Administrative Law?

Bolstering your clinic case with more evidence?

Supporting the role of the press in a healthy democracy?

Finding out what records the government is holding on *you*?

Speakers Include:

Harry Hammitt
Federal FOIA Expert
Editor, Access Reports

~

Colleen Murphy
Executive Director and General Counsel of the CT
Freedom of Information Commission (FOIC)

Monday, Feb. 6, 2012

6:10 p.m. - 8:00 p.m.

Room 122

Dinner Provided

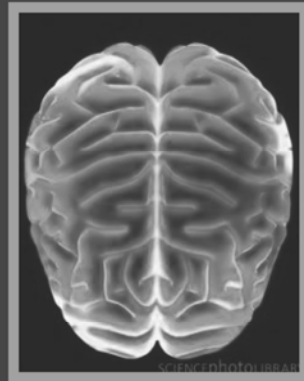


YALE LAW SCHOOL

The Information Society Project

Get Scanned, Get Canned: Deception Detection and Neuroscience Technology Outside the Courtroom

2:00 - 4:00 pm
Friday, February 24
Room 120
Yale Law School



Panelists:

Owen D. Jones, New York Alumni Chancellor's Professor of Law
and Professor of Biological Sciences at Vanderbilt University

Adam Kolber, Professor of Law, Brooklyn Law School, Visiting
Fellow, NYU School of Law

John Meixner, JD/PhD Candidate, Northwestern University

Moderator:

Bradley Moore, ISP Visiting Fellow, Yale Law School

ABRAMS INSTITUTE FOR
FREEDOM OF EXPRESSION

**Interrogation After
9/11, Censorship,
and Journalism**

4 - 6 pm

Tuesday, February 28

Room 120

Yale Law School

Panelists:

Daniel Freedman, Director of Strategy and Policy Analysis of The Soufan Group; co-author of "The Black Banners: The Inside Story of 9/11 and the War Against al Qaeda"

Ali Soufan, former FBI Supervisory Agent; co-author of "The Black Banners: The Inside Story of 9/11 and the War Against al Qaeda"

Andrew Weissmann, General Counsel, FBI

Charles Savage, Washington correspondent, New York Times

Moderator:

Nicholas Bramble, Director of the Law and Media Program at the Information Society Project, Yale Law School

Asha Rangappa, Associate Dean, Yale Law School



YALE LAW SCHOOL

The Information Society Project

ABRAMS INSTITUTE FOR
FREEDOM OF EXPRESSION

Presents

MOVIE NIGHT

Magnolia Films'

PAGE ONE :
INSIDE THE NEW YORK TIMES



Directed by
Andrew Rossi
YC'95

Produced and
Written by
Kate Novack and
Andrew Rossi

WEDNESDAY
MARCH 21, 2012
6:10 PM
Room 127



YALE LAW SCHOOL
The Information Society Project

Yale Law School

Information Society Project

 John S. and James L.
Knight Foundation
www.knightfoundation.org



LAW AND MEDIA

C Children's **O** Online **P** Privacy **P** Protection **A** Act

Monday, April 9
12:30 - 2:00 pm
YLS Room 120

Lunch is provided

P A N E L:

What's the future of children's online privacy?

Panelists:

Emily Bazelon, Senior Editor at *Slate*, Senior Research Scholar in Law, Lecturer in Law, and Truman Capote Fellow for Creative Writing and Law at Yale Law School

Danah Boyd, Assistant Professor at Media, Culture, and Communication at New York University, Visiting Researcher at Harvard Law School and Fellow at Harvard's Berkman Center. Co-author of *Hanging Out, Messing Around, and Geeking Out: Kids Living and Learning with New Media*

Elizabeth K. Englander, Professor of Psychology at Bridgewater State University (MA)

Mary Engle, Associate Director for Advertising Practices, Federal Trade Commission (FTC)



YALE LAW SCHOOL
The Information Society Project

**Spying on Students:
NYPD Monitoring of Muslim
Students Associations**

Thursday, 12 April 2012
Noon- LUNCH
Room 120
Yale Law School

Please join us for a lunch panel discussion on the legal, ethical, and practical implications of the recent disclosure of NYPD monitoring of Muslim Students Associations including that at Yale, with:

Moderator:

Hope Metcalf, Associate Research Scholar in Law; Director, Arthur Liman Program; and Clinical Lecturer in Law at YLS.

Panelists:

Baher Azmy, Professor at Seton Hall Law School and current Legal Director of the Center for Constitutional Rights.

Jack Balkin, Knight Professor of Constitutional Law and the First Amendment at Yale Law School. Founder and director of the Information Society Project.

Nusrat Choudhury, Staff Attorney in the ACLU's National Security Project.

Dean Esserman, Chief of Police of New Haven and Clinical Visiting Lecturer in Law at Yale Law School.

Vegetarian (non-pizza) lunch will be served. Open to the Yale Community.

*Sponsored by the Muslim Law Students Association and
the Information Society Project at Yale Law School*



Yale Law School

V I S U A L L A W P R O J E C T

Summary of Visual Law Project Year Two - 2011-2012

During the academic year, five students and two teaching fellows filmed and edited *The Worst of the Worst*, a one-hour documentary film on Northern Correctional Institute, the super maximum security prison in Connecticut. The group met weekly to learn the building blocks of film production and visual advocacy and put these skills to work during more than twenty days of filming on location with former inmates, correctional officers, family members, and Department of Correction officials. In addition to interviewing, filming, producing, and editing, students wrote legal memos and met with a number of noted lawyers and filmmakers during the Fall semester. The group released a trailer for the film in April and is currently working with a team of professional animators and composers to prepare a full-length version for distribution in Fall 2012.

The trailer for our forthcoming film can be viewed here: <http://yalevisuallawproject.org/film/the-worst-of-the-worst/>

Partnerships and Outreach:

The Visual Law Project worked with the Human Rights and Detention Clinic to develop the topic for this year's film. The Project led a panel discussion on visual advocacy for the 2012 Reblaw Conference at Yale and participated in discussion about solitary confinement and Supermax prison with the Liman Colloquium. We distributed our two previous films, *Stigma* and *Alienation*, on our Web site and continued to work with the Digital Media Center for the Arts, who provided technical support and trainings.

Vision:

In preparation for our third year, we are exploring collaboration with a prominent human rights organization and continued guidance from Yale Law School faculty and clinics to produce our next film. We will also lead a second team devoted to distribution and advocacy supporting *The Worst of the Worst*.

Harvard-MIT-Yale-Columbia Cyberscholar Working Group

The “Harvard-MIT-Yale-Columbia Cyberscholar Working Group” is a forum for fellows and affiliates of the Comparative Media Studies Program at MIT, Yale Law School Information Society Project, and the Berkman Center for Internet & Society at Harvard University to discuss their ongoing research.

NOV 10 BERKMAN CENTER, HARVARD

Empower Public Sphere with ICTs--A Chinese Perspective

Jia Wang

DEC 7 AT YALE LAW SCHOOL

Murray Turoff and the Evolution of Computer Mediated
Communication

Ramesh Subramanian

FEB 1, 2012 AT BERKMAN CENTER, HARVARD

Transparency with(out) Accountability: The Effects of the Internet
on the Administrative State

Jennifer Shkabatur

FEB 28, 2012 AT MIT

Digital commons: How does governance shape collaborative
communities (in term of scale of participation and complexity of
collaboration)?

Mayo Fuster Morell

The Hacker as Media Metaphor: Policy Effects of the Media
Portrayals of Hackers and Hacktivists

Molly Sauter

MARCH 27, 2012 AT COLUMBIA UNIVERSITY

"The Future Criminal Investigation in the Digital Age"

Harris Chen

"Traditional Knowledge – Culture Expression and Access to Knowledge: The Open Questions"

Shlomit Yanisky-Ravid

"Comparing Management-Based Regulation and Prescriptive Legislation: How to Improve Information Security through Regulation"

David Thaw

"Analyzing Russian Social Media"

John Kelly

MAY 2, 2012 YALE LAW SCHOOL

"Incitement to Riot in the age of Flash Mobs"

Margot Kaminski

"Innovation in Online Gambling"

Rebecca Bolin

“Beyond ‘digital literacy’ there is Cybercy: what does this new concept index?”

Catalina Laserna

CLINICAL ACTIVITIES

Media Freedom and Information Access Practicum

Yale Law School has long focused on the intersection of law, media and journalism. The Media Freedom and Information Access Practicum is a team of student practitioners dedicated to increasing government transparency and supporting both traditional and emerging forms of newsgathering through impact litigation and policy work.

News:

In its short life, MFIA has garnered an impressive string of victories for journalists and on behalf of the public interest at both the state and federal levels. Among its several successes:

- MFIA clinic works with Attorney/Gawker writer John Cook with FOIA requests in a suit against National Archives and Records Administration. (More here: <http://gawker.com/5897168/bush-and-cheney-are-for-snooping-in-everyones-library-records-but-theirs>)
- MFIA won a unanimous decision from the Connecticut Freedom of Information Commission requiring the release of police mug shots and declaring void a police policy restricting access to such material.
- The Clinic has filed several amicus briefs on hotly contested access issues. These have included arguments supporting the right of public access to administrative hearings, the importance of public access to information related to the operation of state prisons, and in support of anonymous speech online.
- The Clinic hosted the FOIA Boot Camp where several speakers gave a crash course on filing and working with Freedom of Information Access briefs.

MFIA Clinic Press Release:

Tomorrow, April 5, 2012, the Media Freedom and Information Access Clinic (MFIA) will be in the First Circuit arguing an exciting case about the public's right of access to court proceedings and judicial documents. MFIA is representing Jim Edwards, an award-winning journalist for Bnet.com. Edwards requests that the First Circuit unseal numerous judicial documents in a criminal case—documents to which the public has a qualified right of access under both the First Amendment and the common law.

The release of these documents is necessary for the public to understand the surprising outcome of this criminal case. Two defendants were convicted of multiple counts of mail fraud in connection with an advertising kickback scheme; despite recommended sentences of several years in jail, both walked away with probation. These dramatically reduced sentences can be attributed to what the defendants argued in sentencing memoranda and other documents filed with the court—documents which have been sealed and which the public has no way of accessing at present.

To help the public understand what happened in this case, Jim Edwards asked the District Court of Massachusetts, on three separate occasions, to unseal the documents. Sixteen months later, the district judge responded with a two-sentence order refusing to unseal the documents on the grounds that they were “personal.” This judge's actions, and the judicial secrecy of this case in general, undermine the public's well-established right to enter courtrooms and access judicial documents. In many circumstances, this right provides the only public oversight mechanism for our judicial system.

Now on appeal in the First Circuit, Edwards repeats his request that the court unseal the documents at issue. Edwards and the MFIA team also seek to remind judges that, under Supreme Court precedent, sealing documents is an exceptional measure requiring particularized, on-the-record findings as to why a private party's interest in secrecy outweighs the public's presumptive right of access. Jeremy Kutner, a MFIA Student Director, will be arguing on behalf of Jim Edwards.

AMICUS BRIEFS

IN THE
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,

Petitioners,

—v.—

FOX TELEVISION STATIONS, INC., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

**BRIEF OF *AMICI CURIAE*
YALE LAW SCHOOL INFORMATION SOCIETY
PROJECT SCHOLARS, NEW AMERICA FOUNDATION,
AND PROFESSOR MONROE PRICE
IN SUPPORT OF NEITHER PARTY**

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INTEREST OF *AMICI CURIAE*¹

Amici include Yale Law School Information Society Project scholars, the New America Foundation, and Professor Monroe Price, a First Amendment and media scholar.²

The Information Society Project at Yale Law School (ISP) is an intellectual center addressing the implications of new information technologies for law and society. Marvin Ammori, a Visiting Scholar at Stanford Law School and an Affiliated Fellow of the Yale ISP, publishes in First Amendment and Internet policy. Nicholas Bramble, a Lecturer in Law at Yale Law School and Director of the Law and Media Program at the Yale Law School ISP, has written articles on First Amendment law and information policy.

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made any monetary contribution toward the preparation or submission of this brief. Counsel for the respondents, on June 28, 2011, June 29, 2011, and July 1, 2011, and counsel for the petitioners, on July 8, 2011, have filed in this Court consent to the filing of amicus curiae briefs in support of either party or of neither party in fulfillment of S. Ct. Rule 37.3. This brief was written by Nicholas Bramble, Lecturer in Law at Yale Law School and Director of the Law and Media Program at the Information Society Project at Yale Law School, under the supervision of the undersigned Senior Fellow of the ISP, Priscilla Smith. Portions of this brief are derived from a brief written by Marvin Ammori and submitted to the Court in *FCC v. Fox Television Stations, Inc.*, 556 U.S. ___, 129 S. Ct. 1800 (2009).

² The amici participate in this case in their personal capacity; titles are used only for purposes of identification.

The New America Foundation is a nonprofit, nonpartisan public policy institute that invests in new thinkers and new ideas to address the next generation of challenges facing the United States. One of its major projects is the Wireless Future Project, which develops and advocates policy proposals to promote universal, affordable and ubiquitous broadband and improve the public's access to critical wireless communication technologies.

Monroe Price, now a professor at the University of Pennsylvania's Annenberg School for Communication, was dean of Cardozo School of Law from 1982 to 1991. He is the author of several books on free speech and new media.

SUMMARY OF ARGUMENT

This case rests on a fairly narrow question concerning the constitutionality of broadcasting regulations designed to suppress and censor indecent speech. However, parties on both sides of this case have argued that this Court, in addressing such indecency regulations, should consider a much broader set of constitutional rationales for spectrum regulation. Broadcasters explicitly suggest that the "scarcity rationale" is properly before the Court. Amici submit this brief in support of neither party to stress that this overreaching is both unnecessary and unwise.

First, this Court's decision in *FCC v. Pacifica*³ squarely addresses the constitutionality of indecency regulations and does not rely on the scarcity rationale. The Court can and should review the continuing vitality of *Pacifica* without questioning other lines of this Court's precedent wholly unrelated to indecency regulation. Simply put, the scarcity rationale associated with *Red Lion v. FCC*,⁴ *NBC v. United States*,⁵ *FCC v. Nat'l Citizens Comm. for Broad.*,⁶ and *CBS v. FCC*⁷ is wholly irrelevant to this case. The Court should follow its prudential rule of avoiding constitutional questions irrelevant to the case or controversy before this Court and merely address the indecency issue actually before the Court.

Moreover, a dispute over broadcasting indecency regulations offers an extremely ill-suited forum for revisiting the scarcity rationale and needlessly hurling into doctrinal chaos all of the spectrum policy that rationale supports. This rationale has never been invoked as a basis for indecency regulation. Indeed, Justice Brennan's dissent in *Pacifica* commends the majority, with which he disagrees, for understanding that the scarcity rationale is not relevant to indecency regulation. Nothing in the scarcity rationale underpinning *Red*

³ *FCC v. Pacifica Found.*, 438 U.S. 726 (1978).

⁴ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

⁵ 319 U.S. 190 (1943).

⁶ 436 U.S. 775 (1978).

⁷ 453 U.S. 367 (1981).

Lion, NBC v. U.S., and other Court precedents justifies governmental decisions to engage in censorship or suppression of certain viewpoints.

Casting doubt on the scarcity rationale would inject uncertainty into a wide variety of actions that the government adopted by government in reliance on that rationale. These actions, many of which have been upheld by this Court, include imposing ownership limits and universal service obligations, promoting diverse uses of spectrum, experimenting with the limited authorization of unlicensed spectrum usage, implementing new economic models for the allocation of spectrum, providing equal time for political candidates, and so on. These laws generally attempt to broaden access to spectrum rights for more speakers, and are easily distinguishable from the suppression of speech evident in indecency regulations. It is for this reason, in fact, that this Court has clearly held that indecency regulations do not rely on the scarcity rationale implicated by these other governmental decisions.

The scarcity rationale forms the backdrop for all spectrum regulation, from television broadcasting to mobile Internet services. It suggests that because there are constraints on the availability and simultaneous usage of spectrum, the government must play a role in allocating rights to this spectrum, and the government may pursue allocations that ensure the widest availability of diverse and antagonistic sources of speech. Compared to other justifications for First Amendment scrutiny of spectrum licensing decisions, the scarcity rationale provides greater leeway for governmental decisions

to promote nondiscriminatory, universal access to diverse sources of speech.

While scarcity was a rationale in the *Red Lion* decision, which upheld a fairness doctrine repealed almost 25 years ago, many other decisions also rely on scarcity. For example, the government is currently seeking to auction billions of dollars of spectrum both to address debt obligations and to transfer more spectrum from older technologies like broadcast television to modern technologies including mobile Internet access. When the government seeks to auction this spectrum, it will decide among a range of auction mechanisms (possibly including two-sided auctions with broadcasters) and will impose rules ranging from nondiscrimination rules to build-out and service obligations. Such decisions enable spectrum to be used widely and effectively for a range of purposes. Without the scarcity rationale, these speech-focused government regulations might be subject to intrusive judicial second-guessing.

Even though, under this Court's precedent, indecency regulation does not implicate the scarcity rationale at all, several parties before the Court use this appeal of an indecency order to argue that the scarcity rationale for limiting judicial scrutiny of spectrum allocations has faded in importance. But a case concerning indecency regulations presents a dangerously underdeveloped vehicle for evaluating, questioning, or updating the rationales underlying spectrum regulation. Given that scarcity currently serves as the primary justification for the government's attempts to allocate spectrum and balance the claims of competing users, any effort by

the Court to evaluate this rationale requires more consideration than passing references in this case's briefs could ever provide.

Evaluation of this rationale should occur in the context of a proceeding that actually relies upon the scarcity rationale. Such a proceeding would offer the opportunity for greater analysis of the factual predicates for this rationale, and would give parties the chance to describe alternative rationales upon which the government might rely in allocating and structuring spectrum usage.

ARGUMENT

Amici caution the Court not to undermine the continuing vitality of the scarcity rationale underlying *Red Lion v. FCC*, *NBC v. United States*, *FCC v. Nat'l Citizens Comm. for Broad.*, and *CBS v. FCC* when determining whether the Federal Communications Commission's context-based approach to determining indecency is unconstitutionally vague. The Court may wish to extend its analysis beyond vagueness in order to examine prior justifications for limiting the degree of First Amendment scrutiny applied to broadcasting indecency regulations. But in evaluating the broader constitutionality of *indecency* regulations, which have heretofore been justified solely by the pervasiveness of broadcasting, its intrusive nature, and its accessibility to children, the Court need not examine the rationales underlying other broadcast decisions.

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

—v.—

ANTOINE JONES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF OF *AMICI CURIAE*, YALE LAW SCHOOL
INFORMATION SOCIETY PROJECT SCHOLARS AND
OTHER EXPERTS IN THE LAW OF PRIVACY AND
TECHNOLOGY IN SUPPORT OF THE RESPONDENT**

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INTEREST OF *AMICI CURIAE*¹

Amici are scholars specializing in privacy and technology law, and scholars associated with the Information Society Project at Yale Law School (ISP),² an intellectual center addressing the implications of new information technologies for law and society. They are: **Danielle Citron**, Lois K. Macht Research Professor of Law at the University of Maryland School of Law, an expert in information privacy law, former Chairperson for the AALS Section on Defamation and Privacy, and current Advisory Board Member for the SSRN *Journal on Information Privacy Law*; **Susan Freiwald**, Professor of Law at the University of San Francisco School of Law, an expert in cyberspace and information privacy law, and author of numerous articles and briefs about regulation of modern communications surveillance; **Stephen Henderson**, Professor of Law at the University of Oklahoma College of Law who writes and lectures on criminal procedure and computer crime, and serves as Reporter for the ABA Criminal Justice Standards on Law Enforcement Access to Third Party Records; **Chris Hoofnagle**, Director of the Berkeley Center for Law & Technology's information privacy programs, senior fellow to the Samuelson Law, Technology & Public Policy Clinic, and Lecturer in

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, letters indicating the parties' consent to the filing of this *amicus* brief have been submitted to the Clerk.

² The Fellows participate in this case in their personal capacity; titles are used only for purposes of identification.

Residence at UC Berkeley Law School; **Renee Hutchins**, Associate Professor of Law at University of Maryland School of Law, an expert in criminal procedure, who writes on the use of GPS surveillance technology, formerly served as a federal prosecutor with the U.S. Department of Justice and a Special Assistant U.S. Attorney in the District of Columbia; **Helen Nissenbaum**, Professor of Media, Culture, Communication & Computer Science at New York University, Senior Faculty Fellow at the Information Law Institute, and author of *PRIVACY IN CONTEXT: TECHNOLOGY, POLICY AND THE INTEGRITY OF SOCIAL LIFE* (Stan. Univ. Press 2009); **Paul Ohm**, Associate Professor of Law at the University of Colorado Law School who writes in the areas of information privacy, computer crime, and criminal procedure; **Christopher Slobogin**, Milton R. Underwood Chair in Law, Professor of Psychiatry and Director of the Criminal Justice Program at Vanderbilt Law School, author of over 100 articles, books and chapters on criminal procedure and evidence; **Robert Ellis Smith**, publisher of *PRIVACY JOURNAL* since 1974 and author of "The Law of Privacy Explained" (2004); **Daniel Solove**, John Marshall Harlan Research Professor of Law at George Washington University Law School, an expert in privacy law and author of many books and articles on privacy, including *INFORMATION PRIVACY LAW* (Aspen, 3rd edition 2009) and *UNDERSTANDING PRIVACY* (Harv. Univ. Press 2008); and **William Staples**, Professor and Chair of Sociology at the University of Kansas, who writes on surveillance studies, privacy, law, and historical sociology.

Amici scholars associated with the ISP³ are **Jack Balkin**, Knight Professor of Constitutional Law and the First Amendment and founder and director of the ISP; **Margot Kaminski**, Research Scholar in Law and Executive Director of the ISP, who has written on law and technology issues; **Nabiha Syed**, currently First Amendment Fellow at the New York Times; **David Thaw**, Postdoctoral Research Associate in the Department of Computer Science at the University of Maryland, who has published on issues related to information security, privacy and spyware; and **Albert Wong**, ISP Fellow and Ph.D. candidate at Yale University, who has published multiple peer-reviewed articles in engineering and biology.

SUMMARY OF ARGUMENT

Advanced surveillance technologies significantly enhance law enforcement's ability to maintain order and public safety. However, in an era of rapidly advancing technologies, from thermal imagers to automated tracking devices, it is critical to ensure that these technologies are used only "in a manner which will conserve ... the interests and rights of individual citizens," *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (internal citation omitted), and conform to the Fourth Amendment. In most cases, "requiring a warrant will have the salutary effect of ensuring that use of [new technology] is not abused." See *United States v. Karo*, 468 U.S. 705, 717 (1984). The

³ Fellows of the Information Society Project at Yale Law School, Nabiha Syed, Albert Wong, and David Thaw, helped to prepare this brief under the supervision of Priscilla Smith, Senior Fellow of the ISP.

panel below correctly recognized that Global Positioning System (“GPS”) surveillance technology used for prolonged surveillance of a target’s activities in public should be subject to the warrant requirement.

The Fourth Amendment’s warrant requirement applies to a surveillance technology used in public if the technology: 1) extends beyond human capabilities for surveillance, increasing the potential for surveillance abuse; and 2) collects information the public expects to be private in a way that is not generally used and/or accepted by the general public.

In this case, first, surveillance with GPS is conducted *not by people* but by advanced tracking devices communicating with satellites in orbit and computers on the ground. As a technological substitute for traditional visual tracking, it substantially expands human capabilities far beyond “naked-eye”⁴ surveillance and vastly increases the potential for law enforcement abuse of GPS technology to conduct prolonged surveillance both against individuals as well as groups of individuals.

Second, prolonged surveillance using GPS technology intrudes on reasonable expectations of privacy under this Court’s precedents and according to tests suggested by scholarship. It provides the government with detailed information about an individual’s movements, associations, contacts and activities, allowing the storage, analysis, and comparison of that data with data gathered from others, all with minimal involvement of law

⁴ See *Kyllo*, 533 U.S. at 33.

enforcement officers. As the panel correctly held, the type and scope of information collected enables government to monitor people's political associations, their medical treatment, and their amorous liaisons, in a way that invades their privacy and chills expression of other fundamental rights. It allows surveillance of citizens on a scale that this country has never seen and in a way that the general public has rejected.⁵

United States v. Knotts,⁶ relied on by the Government, is limited to the use of beeper technology as a sense-enhancement of, *not a replacement for*, "naked-eye" surveillance.⁷ This Court has always required warrants for the use of privacy-invading technologies that replace human or other natural senses with technological ones.⁸ Moreover, in *Knotts* this Court reserved the question of twenty-four hour dragnet surveillance using powerful new technologies.

This Court should affirm the decision of the Court of Appeals,⁹ and clarify that, while law enforcement

⁵ *United States v. Pineda-Moreno*, 617 F.3d 1120, 1126 (9th Cir. 2010) (Kozinski, C.J., dissenting from denial of rehearing *en banc*) (making comparison to surveillance under totalitarian regime); *United States v. Cuevas-Perez*, 640 F.3d 272, 294 (7th Cir. 2011) (Woods, J., dissenting) (GPS surveillance invites "an unprecedented level of government intrusion into every person's private life.").

⁶ 460 U.S. 276 (1983).

⁷ Compare *Knotts*, 460 U.S. at 282 with *Karo*, 468 U.S. at 714-15.

⁸ See *Kyllo*, 533 U.S. at 40; *Karo*, 468 U.S. at 717; *Katz v. United States*, 389 U.S. 347 (1967); *Walter v. United States*, 447 U.S. 649 (1980).

⁹ See *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010).

may employ GPS tracking devices in their efforts to enhance public safety, use of GPS technology in this case required a warrant to “assure preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.”¹⁰

¹⁰ See *Kyllo*, 533 U.S. at 34.

¹¹ *United States v. Di Re*, 332 U.S. 581, 595 (1948).

¹² *Camara v. Mun. Ct. of City & Cty. of San Francisco*, 387 U.S. 523, 528 (1967). See also *Byars v. United States*, 273 U.S. 28, 33-34 (1927) (Fourth Amendment “adopted in view of long misuse of power in the matter of searches and seizures.”).

¹³ See, e.g., Susan W. Brenner, *The Fourth Amendment in an Era of Ubiquitous Technology*, 75 Miss. L. J. 1, 5-7 (2005); Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 741 (1999).

IN THE
Supreme Court of the United States

THE ASSOCIATION FOR MOLECULAR PATHOLOGY, ET AL.,
Petitioners,

—v.—

MYRIAD GENETICS, INC., ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**BRIEF OF AMICI CURIAE,
INFORMATION SOCIETY PROJECT AT YALE LAW SCHOOL
SCHOLARS IN SUPPORT OF THE PETITION**

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INTEREST OF *AMICI CURIAE*¹

Amici are scholars with the Information Society Project at Yale Law School (ISP),² an intellectual center addressing the implications of new information technologies for law and society: **Wendy Seltzer**, a Senior Fellow at the ISP, writes on law and technology of free expression and user innovation, including digital copyright, software patent, and information privacy. She founded and leads the Chilling Effects Clearinghouse, exploring legal threats to online expression at <https://www.chillingeffects.org/>; **Margot Kaminski**, Research Scholar in Law and Executive Director of the ISP, writes on privacy, information politics and First Amendment issues; **Priscilla Smith**, Senior Fellow of the ISP, **Jennifer Keighley**, Resident Fellow of the ISP, and **Genevieve Scott**, Visiting Fellow of the ISP, research and write on reproductive rights, with a particular focus on information policy and new technologies.

SUMMARY OF ARGUMENT

As this Court has explained clearly, the grant of a patent is a narrowly tailored exception to our free market system, a “carefully crafted bargain”

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, an email indicating the Respondent's consent to the filing of this *amicus* brief has been submitted to the Clerk. The Petitioners filed a consent to the filing of *amicus curiae* briefs with the Court on December 15, 2011.

² The Fellows participate in this case in their personal capacity; titles are used only for purposes of identification.

designed to strike a balance between the avoidance of monopolies that stifle competition and the need to encourage innovation. *Bonito Boats, Inc. v. Thunder Craft Boats*, 489 U.S. 141, 146 (1989).

In this brief, *Amici* argue, first, that the Court should grant the Petition because Myriad's monopoly on the information contained in Breast Cancer Susceptibility Genes 1 and 2 (hereafter "BRCA 1/2")³ undermines the careful balance struck by the patent rules. The evidence establishes that by limiting research on the BRCA 1/2 genes, and in the field of genetics more broadly, Myriad's patents stifle innovation and prevent information about natural phenomenon from being used in research to improve diagnosis and treatment of deadly diseases.⁴

Second, *Amici* argue that this Court should grant the Petition to closely examine these patents, which harm public health and undermine the exercise of fundamental rights. Myriad's patents create significant health risks for women, limit access to life-saving information about naturally occurring aspects of their own genomes, thereby undermining

³ BRCA1 and BRCA2 "belong to a class of genes known as tumor suppressors. Mutation of these genes has been linked to hereditary breast and ovarian cancer." National Cancer Institute Fact Sheets, *BRCA1 and BRCA2: Cancer Risk and Genetic Testing*, (Mar. 29, 2009), <http://www.cancer.gov/cancertopics/factsheet/Risk/BRCA>.

⁴ Dep't of Health & Human Serv., Sec'y's Advisory Comm. on Genetics, Health, and Soc'y, *Gene Patents and Licensing Practices and Their Impact on Patient Access to Genetic Tests* (April 2010), available at http://oba.od.nih.gov/oba/sacghs/reports/SACGHS_patents_report_2010.pdf (hereinafter SACGHS report) (hereinafter SACGHS report).

their liberty rights to decisional autonomy, bodily integrity, and procreation.

11-2735-cv(L)

11-2929-cv

IN THE

United States Court of Appeals
FOR THE SECOND CIRCUIT

THE EVERGREEN ASSOCIATION, INC., DBA EXPECTANT MOTHER CARE
PREGNANCY CENTEREMC FRONTLINE PREGNANCY CENTER, LIFE CENTER OF
NEW YORK, INC., DBA AAA PREGNANCY PROBLEMS CENTER, PREGNANCY
CARE CENTER OF NEW YORK, INCORPORATED AS CRISIS PREGNANCY CENTER OF
NEW YORK, A NEW YORK NOT-FOR-PROFIT CORPORATION, BORO PREGNANCY
COUNSELING CENTER, A NEW YORK NOT-FOR-PROFIT CORPORATION, GOOD
COUNSEL, INC., A NEW JERSEY NOT-FOR-PROFIT CORPORATION,

Plaintiffs-Appellees,

—against—

CITY OF NEW YORK, A MUNICIPAL CORPORATION, MICHAEL BLOOMBERG,
MAYOR OF NEW YORK CITY, in his official capacity, JONATHAN MINTZ, THE
COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS,
in his official capacity,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR *AMICUS CURIAE* SCHOLARS FROM
THE INFORMATION SOCIETY PROJECT AT YALE LAW SCHOOL
IN SUPPORT OF DEFENDANTS-APPELLANTS

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INTEREST OF AMICUS CURIAE¹

Amici are scholars² associated with the Information Society Project at Yale Law School (ISP)³ and the ISP's Program for the Study of Reproductive Justice. The program focuses on a wide range of issues concerning the intersections between reproductive rights, health policy, technology policy, privacy concerns, and the regulation and dissemination of information relevant to reproductive freedoms. Amici are **Jack Balkin**, Knight Professor of Constitutional Law and the First Amendment at Yale Law School and founder and director of the ISP; **Margot Kaminski**, Research Scholar in Law and Executive Director of the ISP, and **Anjali Dalal**, Google Policy Fellow of the ISP, both of whom write on privacy, information politics and First Amendment issues; **Priscilla Smith**, Senior Fellow of the ISP, and **Jennifer Keighley**, Resident Fellow of the ISP, both of whom write on reproductive rights and privacy law, with a particular focus on information policy.

¹This brief is filed with the consent of the parties as required under F.R.A.P. 29. No counsel for a party authored the brief in whole or in part; no party or party's counsel contributed money to fund preparing or submitting the brief; and no person other than the amicus curiae or its counsel contributed money intended to fund preparing or submitting the brief.

²The Scholars participate in this case in their personal capacity; titles are used only for purposes of identification.

³The Information Society Project studies the implications of new information technologies for law and society, guided by the values of democracy, human development, and social justice.

STATEMENT OF FACTS

Local Law 17 of 2011 (“the Ordinance”) regulates facilities it dubs “pregnancy service centers” (hereinafter “PSCs”), that have a primary purpose of providing services to women who are or may be pregnant, and that either (1) offer obstetric ultrasounds, sonograms, or prenatal care,⁴ or (2) have “the appearance of a licensed medical facility.” N.Y.C. Admin. Code § 20-815(g). The Ordinance lists six factors that courts should consider in evaluating whether a PSC has “the appearance of a licensed medical facility,” the presence of any two of which constitutes *prima facie* evidence that it does. *Id.* The law exempts from its coverage any facility that is *actually* licensed to provide medical care, or has a licensed medical provider present to provide or supervise the provision of services. *Id.* Thus, the law only targets facilities that offer medical services or otherwise appear to the consumer to be a medical facility, but have no licensed medical provider on staff, thus creating a likelihood of consumer deception.

The Ordinance requires PSCs to make three factual disclosures: 1) that the PSC does not have a licensed medical provider on staff; 2) that the NYC Department of Health encourages women who are or may be pregnant

⁴ Prenatal care is defined in medical terms: “services consisting of physical examination, pelvic examination or clinical laboratory services provided to a woman during pregnancy.” N.Y.C. Admin. Code § 20-815(i).

to consult with a licensed medical provider; and 3) whether the PSC provides or refers for abortions, emergency contraception, and prenatal care. N.Y.C. Admin. Code § 20-816(a)-(e). These disclosures must be made 1) on any advertisements for the PSC's services; 2) on one sign at the PSC's entrance, and one sign inside the PSC's waiting area; and 3) orally, but only upon the request for prenatal care, emergency contraception, or abortion services. *Id.* at § 20-816(f). The Ordinance does not ban any speech or prevent the facilities from disassociating themselves from or commenting on the disclosures.

Given the evidence of the deceptive tactics used by the PSCs, *see* Appellants' Brief 14-24, and the resulting harm to consumers, the City Council concluded that the Ordinance's factual disclosure requirements were a necessary measure to curtail PSCs' ongoing practice of defrauding and deceiving women seeking time-sensitive medical care.

SUMMARY OF ARGUMENT

The district court erred in applying strict scrutiny to strike down the Ordinance for two reasons. First, the court erred in determining that the regulated speech was not commercial. It ignored Supreme Court precedent requiring the court to evaluate the nature of regulated speech in its entirety, taking into account the point of view of the consumer and the impact of the

speech on her economic interests. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 567 (1980). Facilities that offer medical services or hold themselves out as medical facilities to consumers in the marketplace – the only facilities to which the Ordinance applies – can not evade commercial speech doctrine and insulate themselves from reasonable fraud prevention efforts simply by offering services to consumers free of charge. Speech that solicits clients for the PSCs, advertises PSCs, and offers medical services qualifies as commercial speech, even if women do not have to pay to receive services, because it targets them as consumers by offering them free services for which they otherwise would pay. Just as religious speech is not commercialized by the mere solicitation of funds, *Jamison v. Texas*, 318 U.S. 413, 417 (1943) (speech “in pursuit of a clearly religious activity” not commercial, even where money solicited), the free nature of the services provided by PSCs does not automatically make their speech non-commercial. If a reasonable consumer would understand the solicitation as proposing a commercial transaction, including a free substitute for a traditionally commercial transaction, then it can be regulated as consumer speech.

Reasonable regulations of commercial speech are permissible because governments have a valid interest in preventing the deception of consumers

and ensuring the dissemination of truthful, non-misleading information. The First Amendment does not prevent New York City from imposing the Ordinance's narrow factual disclosure requirements to prevent fraud and protect the health of city residents, all without burdening any constitutionally-protected speech, merely because these facilities are able to bankroll the provision of services to unsuspecting consumers. The Ordinance, which seeks solely to inform women about the non-medical and limited nature of the services provided by PSCs, is a reasonable factual disclosure law designed to prevent consumer deception. Any ruling to the contrary would undermine the purpose of the commercial speech doctrine, which is to protect consumers from inaccurate speech in the marketplace.

Second, even if the commercial speech doctrine did not apply, this Court should nonetheless uphold the Ordinance under a lower level of scrutiny⁵ because these factual disclosure requirements target only fraudulent or illegal speech that is not protected by the First Amendment. The Ordinance does not interfere with protected speech of any kind. It applies only to facilities offering medical services to consumers or otherwise appearing to consumers to be medical facilities, and compels them to set the

⁵ We agree with Appellants that the Ordinance withstands strict scrutiny, *see* Appellants' Brief 70-79, but contend that a lower level of scrutiny is appropriate.

record straight by informing potential visitors they are not licensed medical facilities and do not offer a full range of reproductive medical services.

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Jennifer Keighley, Resident Fellow with the Study for Reproductive Justice and the Information Society Project

Internet and Democracy

Led by Student organizer **David Robinson**, Student Fellow

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Led by **Joanna Erdman**, Resident Fellow with the Program for the Study of Reproductive Justice and the Information Society Project at Yale Law School and by **Jennifer Keighley**, Fellow for the Study for Reproductive Justice and the Information Society Project

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Visual technologies have transformed the practice of law in the last decade. Lawyers are using video to present evidence, closing arguments, victim impact statements, and stories for public education campaigns. What is the future of visual advocacy in the legal field? How can legal practitioners more effectively use the art of visual advocacy on behalf of clients and cases? And how can law students better prepare for a media-saturated profession? The reading group explores the intersection between law and visual advocacy through readings, film screenings, and discussions with renowned guest speakers, including award-winning filmmakers and leading legal advocates. The reading group supports the work of the Visual Law Project (VLP) housed in the Information Society Project. Students who join the reading group are not required to be part of the Project.