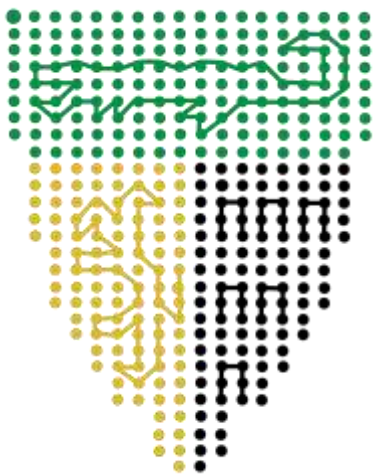


YALE LAW SCHOOL



# Information Society Project

**Accomplishments**

2012-2013

# Table of Contents

|   |            |
|---|------------|
| <b>PEOPLE .....</b>                                       | <b>5</b>   |
| <b>SCHOLARSHIP AND ACADEMIC PRESENTATIONS .....</b>       | <b>11</b>  |
| <b>CONFERENCES.....</b>                                   | <b>25</b>  |
| ISP 15 <sup>TH</sup> YEAR REUNION .....                   | 27         |
| PROTECTING JOURNALISM.....                                | 30         |
| LOCATION TRACKING & BIOMETRICS .....                      | 40         |
| INTERNET GOVERNANCE CONFERENCE .....                      | 56         |
| PATENT-ASSERTION ENTITIES.....                            | 64         |
| FREEDOM OF EXPRESSION SCHOLARS CONFERENCE 1.....          | 68         |
| <b>ACTIVITIES AND SPECIAL EVENTS.....</b>                 | <b>81</b>  |
| ACCESS TO KNOWLEDGE (A2K).....                            | 83         |
| KNIGHT LAW & MEDIA SPEAKERS .....                         | 84         |
| THOMSON REUTERS INITIATIVE SPEAKER SERIES .....           | 85         |
| IDEAS LUNCH SERIES .....                                  | 88         |
| ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION .....          | 91         |
| PROGRAM FOR THE STUDY OF REPRODUCTIVE JUSTICE.....        | 92         |
| FOIA BOOT CAMP.....                                       | 93         |
| YALE VISUAL LAW PROJECT .....                             | 94         |
| HARVARD-MIT-YALE-COLUMBIA CYBERSCHOLAR WORKING GROUP..... | 96         |
| <b>CLINICAL ACTIVITIES .....</b>                          | <b>101</b> |
| MEDIA FREEDOM AND INFORMATION ACCESS PRACTICUM.....       | 103        |
| <b>COURSES.....</b>                                       | <b>109</b> |
| COURSES .....   | 111        |
| READING GROUPS.....                                       | 111        |

# PEOPLE

# Yale Information Society Project

## 2012 - 2013 Directors, Staff and 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

**Natasha Mendez**, Budget Manager

**Heather Branch**, Program and Event Coordinator

### Postdoctoral Resident Fellows

- Rebecca Bolin
- Bryan Choi
- Adam Cohen
- Anjali Dalal
- Camilla Hrdy
- Kara Loewentheil
- Christina Mulligan
- Lisa Larrimore Ouellette
- Pierluigi Perri
- Priscilla Smith

## Visiting Fellows

- Colin Agur
- Carlos Affonso de Souza
- C.W. Anderson
- Leah Belsky
- Chan Mo Chin
- 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
- David Robinson
- Brad Rosen
- Chris Soghoian
- Julia Sonnevend
- Ramesh Subramanian
- Nabiha Syed
- Xiyin Tang
- David Thaw
- Rebecca Wexler
- Christopher Wong
- Shlomit Yanisky-Ravid

## Knight Law and Media Scholars

Giselle Barcia, 2013  
Allyson Bennett, 2013  
Andrew Burt, 2014  
Conor Clarke, 2015  
Laura della Vedova, 2014  
Carlton Forbes, 2014  
Patrick Hayden, 2014  
Isia Jasiewicz, 2013  
Christina Konigisor, 2014  
David Lamb, 2013  
John Langford, 2014  
Ryan McCartney, 2014

Iya Megre, 2014  
Max Mishkin, 2014  
Anjali Motgi, 2014  
Dayo Olopade, 2014  
Jane Rosen, 2013  
James Shih, 2013  
Jacob Victor, 2014  
Alyssa Work, 2013  
Josh Weinger, 2014  
Laura Torre Gomez, 2014

## ISP Student Fellows

- Sam Adelsberg, 2013
- Giselle Barcia, 2013
- Allyson Bennett, 2013
- Hannah Brennan, 2013
- Andrew Burt, 2014
- Usha Chilukuri, 2013
- Deborah Jane Cooper, 2013
- Laura della Vedova, 2014
- Marissa Doran, 2013
- Navid Hassanpour, 2013
- Matthew Halgren, 2015
- Miriam Hinman, 2015
- Thomas Huang, 2013
- Pat Hayden, 2014
- Isia Jasiewicz, 2013
- John Langford, 2014
- David Lamb, 2013
- Max Mishkin, 2014
- Nathana O'Brien, 2015
- Dayo Olopade, 2014
- Eric Parrie, 2013
- Daniel Pastor, 2013
- Robert Quigley, 2014
- Jane Rosen, 2013
- David Ryan, 2013
- James Shih, 2013
- Jonathan Soleimani, 2013
- Wanling Su, 2014
- Nafees Syed, 2014
- Ivy Wang, 2013
- Josh Weinger, 2014
- Albert Wong, 2015
- Alyssa Work, 2013

## Undergraduate Student Fellows

- Bobby Dresser, YC 2014
- Aseem Mehta, YC 2014
- Joel Sircus, YC 2014

## Yale University Affiliates

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

# **SCHOLARSHIP AND ACADEMIC PRESENTATIONS**

# Highlights of Fellow Activities

---

## **Rebecca Bolin – Resident Fellow**

### **Articles and Publications**

Rose, I. Nelson and Bolin, Rebecca, *Game On for Internet Gambling: With Federal Approval, States Line Up to Place Their Bets* (2012). Connecticut Law Review, Vol. 44, 2012. Available at SSRN: <http://ssrn.com/abstract=2130681>

Bolin, Rebecca, Risky Mail: *Concerns in Confidential Attorney-Client Email* (February 1, 2012). 80 U. Cin. L. Rev. \_\_ (2012). Available at SSRN: <http://ssrn.com/abstract=2013502> or <http://dx.doi.org/10.2139/ssrn.2013502>

## **Bryan Choi – Resident Fellow, Knight Law & Media Program Director**

### **Articles and Publications**

Choi, Bryan H., *The Anonymous Internet* (2013). 72 Maryland Law Review 501. Available at SSRN: <http://ssrn.com/abstract=2005941>

### **Organizational Work**

In fall 2012 and spring 2013, Choi organized a series of panels for the Abrams Institute for the Freedom of Expression and the Knight Law and Media Program at the ISP, including *Protecting Journalism: Anonymous and Secure Communications for Reporters and Sources*.

In May 2013, Choi organized a two day conference for the Floyd Abram Institute for Freedom of Expression at the Information Society Project –the first annual Freedom of Expression Scholars Conference. The conference brings scholars together to discuss their works-in-progress concerning freedom of speech, expression ,the press, association, petition, assembly, and related issues of knowledge and information policy. The conference offered participants an



opportunity to receive substantive feedback through group discussion see <http://www.yaleisp.org/event/fesc2013>

In fall 2013, Choi began employment as a Visiting Assistant Professor at New York Law School.

---

### **Chan Mo Chun– Visiting Fellow**

Chan-Mo is a Professor of Law at Inha University School of Law, Korea. His areas of interest include Internet Law (Governance, Privacy, Competition, IPR etc.) and International Economic Law. During his stay at ISP (August 2012 to February 2013), Professor Chung read mostly on net neutrality, which became the basis of his current work on platform neutrality. D.Phil. (Oxon), LL.M.(Korea), BA(SNU)

#### **Publications:**

- “Review of Privacy Policies of Personal Data Processors and Audit of Privacy Protection: Lessons from the EU, the UK and the US Experiences”, 20 *Chosun University Law Review*, March, 2013. (In Korean)
  - “An Overview of the Developments of ICANN Internet Governance and Some Recommendations for Korea”, 19 *NLA Journal of Information Policy*, September 2012. (In Korean)
- 

**Adam Cohen – Resident Fellow, Thomson Reuters Fellow, Lecturer in Law**

#### **Classes:**

Adam Cohen co-taught the Media Freedom and Information Access Clinic, along with Privacy Law and Media Law.

#### **Publications:**

Cohen, Adam, *The Media that Need Citizens: The First Amendment and the Fifth Estate*, 85 S. Cal. L. Rev.1 (

---

## **Anjali Dalal – Resident Fellow**

### **Articles and Publications**

Dalal, Anjali, Administrative Constitutionalism and the Re-Entrenchment of Surveillance Culture (March 4, 2013). Available at SSRN: <http://ssrn.com/abstract=2236502> or <http://dx.doi.org/10.2139/ssrn.2236502>

### **Media Publications**

*CISPA and Surveillance Culture: Who Has the First Amendment Right Against Whom?* Balkinization, April 21, 2013;  
<http://balkin.blogspot.com/2013/03/cispa-and-surveillance-culture-who-has.html>

*Reflecting on PRISM: The Institutional Failures that Led to Surveillance Culture*, Blakinization, June 10, 2013;  
<http://balkin.blogspot.com/2013/06/reflecting-on-prism-institutional.html>

### **Presentations:**

Privacy Law Scholars Conference

University of California at Berkley - June 6, 2013

*Administrative Constitutionalism and the Development of the Surveillance State*

---

## **Camilla Hrdy – Resident Fellow**

### **Publications:**

Camilla A. Hrdy, *State Patent Laws in the Age of Laissez-Faire*, 28 Berkeley Tech. L.J. (2013)

Camilla A. Hrdy, *Dissenting State Patent Regimes*, 3 IP Theory 78 (2013)

Camilla A. Hrdy, *State Patents as a Solution to Underinvestment in Innovation*, 62 U. Kan. L. Rev. (forthcoming, 2014)

### **BLOG POSTS**

"What is Happening in Vermont? Patent Law Reform from the Bottom Up," Guest post on Patently-O (May 27, 2013), <http://www.patentlyo.com/patent/2013/05/what-is-happening-in-vermont-patent-law-reform-from-the-bottom-up.html>

Commentary on Chinese IP Law, Guest post on Written Description, <http://writtendescription.blogspot.com/2012/10/chinese-ip-law.html>

## AWARDS AND RECOGNITIONS

Awarded a Thomas Edison Innovation Fellowship from George Mason University School of Law, 2013-14

"Dissenting State Patent Regimes" was selected number ten on "Top Ten Articles on Open Innovation in 2013," <http://www.openinnovation.eu/07-05-2013/768/>

## PRESENTATIONS

Local Innovation Incentives. Intellectual Property (IP) Scholars Conference, Cardozo Law School (August 8, 2013)

## SELECTED MEDIA MENTIONING MY WORK

State patents vs US patents: could addition by subtraction be the best bet for dissatisfied US inventors?, IP Kat, May 4, 2013, <http://ipkitten.blogspot.com/2013/05/state-patents-vs-us-patents-could.html>

Tim Lee, How Vermont Could Save the Nation From Patent Trolls, The Washington Post Online, August 1, 2013, <http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/01/how-vermont-could-save-the-nation-from-patent-trolls/>

Ying Cheng, Cracking Down on Green Mountain Trolls, June 14, 2013, <http://www.iposgoode.ca/2013/06/cracking-down-on-green-mountain-trolls/>

---

## Margot Kaminski - Executive Director

### **Publications**

*Drone Federalism: Civilian Drones and the Things They Carry*, 4 CALIF. L. REV. CIR. 57 (2013), available at <http://www.californialawreview.org/articles/drone-federalism-civilian-drones-and-the-things-they-carry>.

*Copyright Crime and Punishment: The First Amendment's Proportionality Puzzle*, forthcoming in 73 MD. L. REV. (2014).

*Real Masks and Real Name Policies: Applying Anti-Mask Case Law to Anonymous Online Speech*, 23 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 815 (2013), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2250054](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250054).

*Incitement to Riot in the Age of Flash Mobs*, 81 U. CIN. L. REV. 1 (2013), available at <http://scholarship.law.uc.edu/uclr/vol81/iss1/1/>.

*Addressing the Proposed WIPO International Instrument on Limitations and Exceptions for Persons with Print Disabilities: Hard or Soft Law?* Co-authored with Dr. Shlomit Yanisky-Ravid. Forthcoming in U. PITT. L. REV. (2014) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1959694](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1959694).

*The U.S. Trade Representative's (USTR's) Democracy Problem*, 35 SUFFOLK TRANSNAT'L L. REV. 519 (2012) (invited symposium issue submission), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2043605](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2043605).

### **Popular Media Publications**

THE ATLANTIC

- *PRISM's Legal Basis: How We Got Here, and What We Can Do to Get Back*, THE ATLANTIC (June 7, 2013), <http://www.theatlantic.com/national/archive/2013/06/pri>

[sms-legal-basis-how-we-got-here-and-what-we-can-do-to-get-back/276667/](http://sms-legal-basis-how-we-got-here-and-what-we-can-do-to-get-back/276667/).

- Tweeted over 200 times, liked on Facebook over 600 times.

#### CONCURRING OPINIONS

*First Sale and the Specter of International Exhaustion*: Kirtsaeng Comes Down, CONCURRING OPINIONS (Mar. 19, 2013), <http://www.concurringopinions.com/archives/2013/03/first-sale-and-the-specter-of-international-exhaustion-kirtsaeng-comes-down.html>

#### **Radio, Video & Podcast Appearances**

##### NPR

- *The Implications of Drones in U.S. Airspace*, NPR (June 16, 2013), <http://www.npr.org/templates/story/story.php?storyId=192415103>.

##### KPFA 94.1

- Up Front, KPFA 94.1 (June 13, 2013), <http://www.kpfa.org/archive/id/92443> (starting at 12:50).

##### THE FLAMING SWORD OF JUSTICE

- *PRISM Break (Episode #59)*, THE FLAMING SWORD OF JUSTICE (June 12, 2013), <http://www.flamingswordofjustice.com/episodes/59-prism-break>.

##### TRUTH IN TECH

- *Episode 17: Privacy versus the First Amendment* (May 17, 2013), <https://itunes.apple.com/us/podcast/truth-in-tech-riparian-data/id635299377>.

##### THIS WEEK IN LAW

- Episode 205 (April 5, 2013), <http://twit.tv/show/this-week-in-law/205>.

Interviewed by #ideadrop on Copyright and Disruptive Technologies, with Wendy Seltzer. Austin, TX (March 11, 2013).  
<http://www.ustream.tv/recorded/29908317>.

Many Voices, Many Eyes: The Promises and Pitfalls of Social Networks. Yale Law School Alumni Weekend, October 20, 2012.  
Panel Moderator. <http://vimeo.com/52182745>.

## **MEDIA COVERAGE**

### WASHINGTON POST

- Timothy B. Lee, *Can State Laws Prevent You from Being Watched by Drones?*, WASH. POST WONKBLOG (June 18, 2013),  
<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/06/18/can-state-laws-protect-you-from-being-watched-by-drones/>.

### SLATE

- Nabihha Syed, *Privacy Concerns Shouldn't Ground Journalism Drones*, SLATE (May 3, 2013),  
[http://www.slate.com/blogs/future\\_tense/2013/05/03/drone\\_regulations\\_need\\_to\\_protect\\_the\\_first\\_amendment\\_as\\_well\\_as\\_citizens.html](http://www.slate.com/blogs/future_tense/2013/05/03/drone_regulations_need_to_protect_the_first_amendment_as_well_as_citizens.html).

## **Presentations**

- Privacy Law Scholars Conference at Berkeley, June 2013. Abstract on intellectual privacy and reader privacy law accepted for presentation by Christopher Wolf, co-authored with Shane Witnov.
- Freedom of Expression Scholars Conference at Yale, May 2013. *Copyright Crime and Punishment*, workshopped by Jason Mazzone.
- ASIL's International Law and Technology Interest Group, April 2013. *Copyright Crime and Punishment* accepted for presentation, workshopped by David Post (<http://www.asil.org/interest-groups-view.cfm?groupid=66>).
- South by Southwest (SXSW) Interactive, at Austin, March 2013. Presented as a panelist on Copyright and Disruptive Technologies ([http://schedule.sxsw.com/2013/events/event\\_IAP4623](http://schedule.sxsw.com/2013/events/event_IAP4623)).

- South by Southwest (SXSW) Music, at Austin, March 2013. Presented as a panelist on The Artist's Copyright Conundrum ([http://schedule.sxsw.com/2013/events/event\\_MP4990](http://schedule.sxsw.com/2013/events/event_MP4990)).
- Works in Progress Intellectual Property (WIPIP), at Seton Hall, February 2013. Early draft of *Copyright Crime and Punishment* accepted for presentation.
- Computers, Privacy and Data Protection (CPDP) Conference in Brussels, January 2013. Presented on drone regulation in domestic airspace in the United States. <http://www.cdpconferences.org/friday25january2013.html>.
- Public Knowledge: The State of Copyright Law and where to Start to Fix It, briefing for congressional staff, panelist: <http://publicknowledge.org/blog/copyright-reform-debate-continues-uncensored>, <http://www.youtube.com/watch?v=PU8y364YcJ8>.
- Presented on criminal copyright infringement as public interest stakeholder at Trans-Pacific Partnership Agreement negotiations in Leesburg, VA in September, 2012.

---

## Kara Loewentheil – Resident Fellow, Program for the Study of Reproductive Justice

### *Articles:*

- *Abortion*, in *Encyclopedia of Human Sexuality* (eds. Patricia Whelehan and Anne Bolin) (Wiley Blackwell, forthcoming 2014).
- Drafted *When Free Exercise Is A Burden: Protecting "Third Parties" In Religious Accommodation Law*, currently out to journals for submission review.

### *Speaking/Panels:*

- Respondent, "Gender on the Market" Panel, Law & Society Conference, Boston, MA, May 30, 2013

- Participant, Abortion & Assisted Reproduction Workshop, Rutgers-Camden Law School, April 5, 2013
- Judge, Sarah Weddington Writing Prize for New Student Scholarship in Reproductive Rights, April 2013
- Lecture, “The First Amendment & Reproductive Rights,” Hampshire College Civil Liberties & Public Policy Program, October 17, 2012
- Moderator, “Activism” Panel, Yale Information Society Project Fifteenth Reunion Conference

---

## **Christina Mulligan – Resident Fellow**

### **Academic Publications**

*Technological Intermediaries and Freedom of the Press*, 66 S.M.U. L. REV. 157 (2013), available at <http://ssrn.com/abstract=2224058>.

*A Numerus Clausus Principle for Intellectual Property*, 80 TENN. L. REV. 235 (2013), available at <http://ssrn.com/abstract=2017023>.

### **Work in Progress**

*Why Personal Property Servitudes Are Disfavored: Lessons for Digital Content and Patented Goods.*

### **Other Publications**

*Using Copyright Law to Censor Speech*, in *GLOBAL CENSORSHIP* (forthcoming).

*Will New Fees Fix the Patent System? Experts Weigh In*, WIRED OPINION, <http://www.wired.com/opinion/2012/09/can-new-fees-fix-the-patent-system/> (Sept. 6, 2012) (invited contribution).

*Free Expression and the DMCA*, in *COPYRIGHT UNBALANCED* (Jerry Brito ed., 2012).



### **Conference Papers and Presentations**

*Software and Intellectual Property*, Association for Computing Machinery, Greater Hartford Chapter, Hartford, CT, May 7, 2013.

Panelist, *Patent Trolls and Start-Ups*, Yale Law School, Apr. 16, 2013.

Panelist, *The Future of First Sale*, Public Knowledge Policy Symposium, U.S. Capitol Visitor Center, Washington, DC, Feb. 26, 2013.

Technology Regulation and Freedom of the Press, Works-in-Progress Intellectual Property (WIPIP) Colloquium, Seton Hall University School of Law, Feb. 23, 2013.

Panelist, *Software Patents Debate*, HackManhattan, New York, NY, Jan. 17, 2013.

Comments on USPTO Agency Reform, Conference on Solutions to the Software Patent Problem, Santa Clara University, Nov. 16, 2012.

Scaling the Patent System, Intellectual Property Scholars Conference, Stanford Law School, Aug. 10, 2012.

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.

---

**Lisa Larrimore Ouellette- Resident Fellow, Thomson Reuters Fellow**

### **Legal Scholarship**

*The Google Shortcut to Trademark Law*, 102 CALIF. L. REV. (forthcoming 2014), <http://ssrn.com/abstract=2195989>.

*Beyond the Patents-Prizes Debate*, 92 TEX. L. REV. (forthcoming 2014) (with Daniel J. Hemel), <http://ssrn.com/abstract=2245691>.

*Patent Experimentalism* (working paper), <http://ssrn.com/abstract=2294774>.

*Cultural Cognition of Patents*, 4 IP THEORY (forthcoming 2014).

## Other Publications

*Do Scientists Read Patents?*, IPWATCHDOG (July 18, 2013), <http://www.ipwatchdog.com/2013/07/18/do-scientists-read-patents/id=43401>.

*Patent Troll Panel at Yale Law School*, PATENTLY-O (Mar. 14, 2013), <http://www.patentlyo.com/patent/2013/05/patent-troll-panel-at-yale-law-school.html>.

*Nanotechnology Patents Are Useful but Could Be Improved*, 7 NATURE NANOTECHNOLOGY 770 (2012), <http://dx.doi.org/10.1038/nnano.2012.219>.

WRITTEN DESCRIPTION BLOG (blog founder, reviewing recent IP scholarship), <http://writtendescription.blogspot.com>.

## Presentations

*Patent Experimentalism*, IP Scholars Conference at Cardozo Law (Aug. 2013).

*The Google Shortcut to Trademark Law*, Northwestern Law Searle Center Research Roundtable (invited talk) (July 2013).

*The Google Shortcut to Trademark Law*, Penn Law School Center for Technology, Innovation and Competition (invited talk) (May 2013).

*Patent Assertion Entities: Promoting or Stifling Innovation?*, Yale Law School Information Society Project (panel organizer and moderator) (Apr. 2013).

*Beyond the Patents-Prizes Debate*, PatCon3 at Chicago-Kent College of Law (Apr. 2013).

*The Google Shortcut to Trademark Law*, Works in Progress Intellectual Property (WIPIP) at Seton Hall University School of Law (Feb. 2013).

*The Google Shortcut to Trademark Law*, Oxford Workshop on Empirical Studies of Trademark Data (invited talk) (Dec. 2012).

*Do Patents Disclose Useful Information?*, Yale Law School Information Society Project 15-Year Reunion (Sept. 2012).

---

**Priscilla (Cilla) Smith – Director, Program for the Study of Reproductive Justice**

**Articles and Publications**

Smith, Priscilla J., *Much Ado about Mosaics: How Original Principles Apply to Evolving Technology in United States v. Jones* (March 14, 2013). North Carolina Journal of Law and Technology, Vol. 14, 2013; Yale Law School, Public Law Working Paper No. 282. Available at SSRN: <http://ssrn.com/abstract=2233561>

---

# CONFERENCES



Information  
Society  
Project

# 15

1997-2012  
*15th Year Reunion*

## Friday, September 28

|                |  |          |
|----------------|--|----------|
| 2:00 – 2:30 pm | Registration   | Room 122 |
| 2:30 - 3:00 pm | Welcome<br>(All Panels and Events will take place in Room 127)   | Room 127 |
| 3:00 – 4:30 pm | <b>Panel 1: Intellectual Property and Innovation</b><br><br>Moderator: <i>Shay David</i><br>•Shyam Balganesh: Gandhi, Freedom, and the Dilemmas of Copyright Law<br>•Lisa Lammore Ouellette: Do Patents Disclose Useful Information?<br>•Shlomi Yarek-Raviv: Access to Knowledge for Visually Impaired Persons<br>•Christina Mulligan: Scaling the Patent System | Room 127 |
| 4:45 – 6:00 pm | <b>ISP Lightning Round</b><br>Moderator: Jack Balkin   | Room 127 |
| 7:00 pm        | Dinner for those who pre-registered (check the paper agenda for location)  |          |

## Saturday, September 29

|                  |   |             |
|------------------|---|-------------|
| 8:30 - 9:30 am   | Hot breakfast   | Dining Hall |
| 9:00 - 9:30 am   | Registration  | Room 122    |
| 9:30 - 11:00 am  | <b>Panel 2: Telecommunications and Access to Knowledge</b><br><br>Moderator: <i>Carlos Afonso de Souza</i><br>•Molly Land: Rights in the Information Age: Is there a Right to the Internet<br>•Ramesh Subramanian: From Lord Hale's "Monopoly-Franchise" to Tim Wu's "Net Neutrality"<br>•Chan-Mo Chung: Korean Net Neutrality<br>•Laura DeNardis: Global Internet Governance: Why Internet Freedom is Not Free | Room 127    |
| 11:15 – 12:15 pm | ISP Games: <i>I Couldn't Disagree With You More</i> and <i>This Is Not Like That</i>  |             |
| 12:15 – 2:00 pm  | Lunch   | Dining Hall |
| 2:00 – 3:30 pm   | <b>Panel 3: Privacy and Security</b><br><br>Moderator: <i>Bryan Choi</i><br>•Seeta Peetha Gangadharan: Digital Inclusion and Tracking<br>•Frank Pasquale: Grand Bargains for Big Data: the Emerging Law of Healthcare Information<br>•David Thaw: The Efficacy of Cybersecurity Regulation<br>•Priscilla Smith: Reproductive Justice and Jones  | Room 127    |
| 3:45 – 4:45 pm   | <b>ISP Reminiscences</b><br>Featuring stories from:<br>Jack Balkin<br>Laura DeNardis<br>James Grimmelmann<br>Eddan Katz...and more  | Room 127    |
| 5:00 – 6:30 pm   | <b>Panel 4: Activism</b><br><br>Moderator: <i>Kara Loewenthal</i><br>•David Karpt: E-government projects and the Field of Dreams Fallacy<br>•Eddan Katz: Occupy Hactivism: the founding of auditorium.org<br>•Nicholas Bramble: On the Beltway<br>•Eric Panik: The Lens and the Law: Making Movies that Make a Difference   | Room 127    |
| 7:00 pm          | Dinner for those who pre-registered (check the paper agenda for location)   |             |

# ISP 15<sup>th</sup> Year Reunion – 1997-2012

## *Friday, September 28*

2:00 – 2:30 pm Registration      Room 122

2:30 - 3:00 pm Welcome      Room 127

*(All Panels and Events will take place in Room 127)*

3:00 – 4:30 pm Panel 1: **Intellectual Property and Innovation**

Room 127

Moderator: Shay David

- Shyam Balganes: Gandhi, Freedom, and the Dilemmas of Copyright Law
- Lisa Larrimore Ouellette: Do Patents Disclose Useful Information?
- Shlomit Yanisky-Ravid: Access to Knowledge for Visually Impaired Persons
- Christina Mulligan: Scaling the Patent System

4:45 – 6:00 pm      **ISP Lightning Round**      Room 127

Moderator: Jack Balkin

7:00 pm      Dinner

*Box 63, 338 Elm Street (near the Marriott Courtyard)*

## *Saturday, September 29*

8:30 – 9:30 am      Hot breakfast      Dining Hall

9:00- 9:30 am      Registration      Room 122

9:30 – 11:00 am      Panel 2: **Telecommunications and Access to Knowledge** Room 127

Moderator: Carlos Affonso de Souza

- Molly Land: Rights in the Information Age: Is there a Right to the Internet
- Ramesh Subramanian: From Lord Hale’s “Monopoly-Franchise” to Tim Wu’s “Net Neutrality”
- Chan-Mo Chung: Korean Net Neutrality
- Laura DeNardis: Global Internet Governance: Why Internet Freedom is Not Free

11:15 – 12:15 pm      ISP Games: *I Couldn't Disagree With You More*  
and *This Is Not Like That*  
12:15 – 2:00 pm      Lunch – Dining Hall

2:00 – 3:30 pm Panel 3: **Privacy and Security**      Room 127

Moderator: Bryan Choi

- Seeta Peña Gangadharan: Digital Inclusion and Tracking: Vulnerable Populations Confront Privacy and Surveillance Concerns
- Frank Pasquale: Grand Bargains for Big Data: the Emerging Law of Healthcare Information
- David Thaw: The Efficacy of Cybersecurity Regulation
- Priscilla Smith : Reproductive Justice and *Jones*

3:45 – 4:45 pm **ISP Reminiscences**      Room 127

Featuring stories from:

- Jack Balkin
- Laura DeNardis
- James Grimmelman
- Eddan Katz
- ...and more

5:00 – 6:30 pm Panel 4: **Activism**      Room 127

Moderator: Kara Loewentheil

- David Karpf: E-government projects and the Field of Dreams Fallacy
- Eddan Katz: Occupy Hactivism: the founding of sudoroom.org
- Nicholas Bramble: On the Beltway
- Eric Parrie : The Lens and the Law: Making Movies that Make a Difference

7:00 pm      Dinner: *Union League Café*, 1032 Chapel Street



**YALE LAW SCHOOL**  
The Information Society Project



# **PROTECTING JOURNALISM**

**ANONYMOUS AND SECURE COMMUNICATIONS  
FOR REPORTERS AND SOURCES**

**Thursday, November 29, 2012  
Room 127**

**Information & Registration at  
[www.law.yale.edu/intellectuallife/protectingjournalism.htm](http://www.law.yale.edu/intellectuallife/protectingjournalism.htm)**



# **Protecting Journalism: Anonymous and Secure Communications for Reporter and Sources**

**Yale Law School**

**Thursday, November 29, 2012**

Video available at

<http://new.livestream.com/yalelaw/ProtectingJournalism>

Reporters often find it necessary to protect the identities of their sources. In the past, that secrecy was easier to achieve. Now, although digital technologies provide fast, convenient communications between reporters and sources, they also facilitate greater surveillance of those communications. If source confidentiality remains crucial to journalism, then reporters have a duty to take better precautions. But what measures are available, which ones are being used, and which ones are actually effective? Do anonymizing tools fulfill the promise of secure communications, or do they endanger users by creating false confidence?

This conference will bring together journalists and technologists to discuss the security needs of journalism; current practices among reporters; the merits and pitfalls of the available technology; and what more can—or should—be done to protect communications of this nature. A Knight Law and Media Program event.

Agenda

(Room 127 at YLS)

9:00 – 10:00 am                      Breakfast (dining hall)

10:10 – 12:00 pm                      Panel I: The Gap between Security Risks and Security Practices

The alarm has been sounding on the weakness of data security practices within the journalism industry. Inadvertent disclosures of a source's identity or of sensitive information could jeopardize the safety of the parties involved, the publication of the news story, or even the integrity of a journalistic institution. Every aspiring reporter is familiar with the legendary success of Woodward and Bernstein in protecting

Mark Felt. What do such situations look like in contemporary journalism—and how have the tactics changed since the days of hanging flags on balconies and meeting in underground garages?

Yet newsrooms and journalism schools have been seemingly slow to react. How does the industry perceive the security risks, what solutions is it offering, and who is in a position to make those decisions? This panel will open the conference by exploring the reasons for concern within journalism, the training programs that have emerged in response, and the measures that are actually being put into practice on the ground.

Moderator: Rebecca Wexler

Panelists:

- Marius Bosch
- Quinn Norton
- Geanne Rosenberg
- Frank Smyth

12:00 – 1:00 pm            Lunch

1:00 – 3:00 pm Panel II: The Faith in Anonymous and Secure Communications

Over the years, an assortment of communication tools have promised security, anonymity, or both, as protection against online and offline threats alike. Some have been debunked and abandoned, but others have endured. What is the current state of the art, and does the technology live up to the hype? If so, how much technological savvy does one need to achieve online anonymity, and what are the common traps and mistakes to avoid? If not, should we be more cautious when touting such tools?

Even if the tools were flawless, would we necessarily want them? In what ways might perfectly secure communication technologies help or hurt the practice of journalism? Would a casual presumption of online anonymity undermine the practice of careful vigilance? Would we want a world in which governments can reliably hide information from the public, and law breakers can reliably hide information from

law enforcement? This panel will examine the claims being made on behalf of secure technologies, as well as the claims being made on behalf of secure journalism.

Moderator: Bryan Choi

Panelists:

- Bryan Ford
- Brian Krebs
- Meredith Patterson
- Cole Stryker

3:00 – 3:15 pm

15 minute Break

3:15 – 5:15 pm  
Usability

Panel III: The Tradeoff between Security and

In an ideal world, the tools we choose would be both perfectly secure and easy to use. We gravitate naturally toward tools that “just work,” especially when deadlines are looming and computer vulnerabilities are vague and unrealized. Yet, maximum security requires cumbersome measures to guard against every possible contingency. Tools that prioritize usability have been criticized for cutting corners and failing to deliver the security they advertise.

This panel will engage the heated debate that has erupted regarding the tradeoff between security and usability. Can an effective middle ground be achieved? What compromises do existing tools already embrace, and should those compromises be celebrated or rejected? How should the development of future security tools and tactics proceed? What is the optimal balance of security and usability for journalists and technologists alike?

Moderator: Nabiha Syed

Panelists:

- Dead Addict
- Kelly Caine
- John Scott Railton
- Eleanor Saitta

## Protecting Journalism: Speakers & Moderators

**Dead Addict** has been active in the computer security world for over 20 years, and has been actively improving the usability of software for the last 20. He lectured on computer security usability at the University of Texas over a decade ago, and has spoken on the intersection between security and usability at multiple security conferences. As a founder of DEFCON, he has spent the last nine years as a leader of its press relations team, engaging with prominent news organizations as well as intrepid security bloggers. He holds no formal credentials.

**Marius Bosch** is Reuters News<sup>1</sup> deputy general manager for the Middle East and Africa, responsible for Editorial operations in Africa and for information security globally. He has worked as a journalist for Reuters in Africa, Germany and the UK and covered conflict in South Africa and Angola. Marius has a particular interest in cyberwarfare and the use of technology in journalism.

**Dr. Kelly Caine** is assistant professor in the Human Centered Computing Division of the School of Computing at Clemson University. Her research interests include human factors, usable security and privacy, the psychology of privacy, human computer interaction, health informatics and designing for special populations. Dr. Caine received her B.A. in Psychology from the University of South Carolina and her M.S. and Ph.D. in Engineering Psychology from the Georgia Institute of Technology.

Dr. Caine is a member of the Human Factors and Ergonomics Society, ACM SIGCHI (computer human interaction), the American Psychological Association and the Institute for Information Infrastructure Protection. She has been awarded grants from NIH and NSF to conduct research on privacy enhancing technologies, has received a Georgia Tech Presidential Fellowship, a fellowship in Information Technology and International Development, and was chosen by the Gvu at Georgia Tech as the Foley Scholar award winner in 2008.

**Bryan Choi** (Moderator) is a Postdoctoral Associate in Law, Thomson Reuters Fellow and Director of the Law and Media Program at the Information Society Project at Yale Law School. His research interests include anonymity, digital identity, privacy, and reputation, particularly as they relate to the internet. Other research interests include patents, copyright, and trademark. He received his B.A. in Computer Science from Harvard College and a J.D. from Harvard Law School. He worked as an associate with the firm Gibson, Dunn & Crutcher, LLP, in Washington, D.C., followed by clerkships with the Hon. Leonard I. Garth of the U.S. Court of Appeals for the Third Circuit and the Hon. William C. Bryson of the U.S. Court of Appeals for the Federal Circuit.

**Bryan Ford** leads the Decentralized/Distributed Systems (DeDiS) group at Yale University, where his research touches on many areas including private, anonymous, and censorship-resistant communication, Internet architecture, and secure operating systems. He has received the Jay Lepreau Best Paper Award for his recent systems work, and multiple grants from NSF, DARPA, and ONR, including the NSF CAREER award. His pedagogical achievements include PIOS, the first operating system course leading students through development of a working multicore OS kernel. Prof. Ford earned his B.S. at the University of Utah and his Ph.D. at MIT, while researching topics including ubiquitous computing, virtualization, microkernel architectures, and programming languages.

**Brian Krebs** is the author of [krebsonsecurity.com](http://krebsonsecurity.com), a daily blog dedicated to in-depth cyber security news and investigation. Most recently, Mr. Krebs was a reporter for The Washington Post, where he covered Internet security, cyber crime and privacy issues for the newspaper and the website.

Krebs got his start in journalism at The Post in 1995, and has been writing about computer security, privacy and cyber crime for more than a decade. His stories and investigations also have appeared in Popular Mechanics, MIT Technology Review, CSOnline and Wired.com.

**Quinn Norton** is a writer who likes to hang out in the dead end alleys and rough neighborhood of the Internet, where bad things can happen

to defenseless little packets. They are also places where new freedoms and poetics are born, and run riot over the network. She started studying hackers in 1995, after a wasted youth of Usenet and BBSing. These days, Quinn is a journalist, has been published in *Wired*, *The Atlantic*, *The Guardian*, *Make Magazine*, *Seed*, and *Irish Times*. She recently concluded a multi-month series on Anonymous and Occupy for *Wired*. She's also the Byte Rights columnist for *Maximum PC*. She covers topics such as science, technology, copyright law, robotics, body modification, and medicine, but no matter how many times she tries to leave, she always comes back to hackers.

**Meredith L. Patterson** is a technologist, science fiction author, and journalist. She is also a blogger and software developer, and a leading figure in the biopunk movement. Patterson is known for her work in computational linguistics and its applications to computer security, as well as for work in the area of data mining and databases. In 2005, she presented the first parse tree validation technique for stopping SQL injection attacks at the Black Hat conference in Las Vegas. In 2009, Dan Kaminsky presented joint work with Patterson and Len Sassaman, revealing pervasive flaws in the Internet's certificate authority infrastructure. Their work revealed that existing web browsers could be fooled into accepting fraudulent X.509 certificates. Patterson has worked for Mu Security (now Mu Dynamics), the Berkeley Phylogenomics Group, Red Lambda, and currently Nuance Communications.

**John Scott-Railton** is a PhD student in Urban Planning at UCLA. Over the past 2 years he has worked extensively to support the free and secure flow of information from Egypt, Libya and Syria. He co-developed the highly collaborative citizen-journalist Voices Projects (@jan25voices and @feb17voices), and is conducting research in collaboration with the Citizen Lab (University of Toronto) on electronic attacks against opposition groups and the media in Libya and Syria. He currently works with Syrian partner groups to support secure communications, and track electronic attacks against the Syrian opposition. His dissertation work focuses on the human security implications of climate change adaptation failures, focusing on West Africa.

**Geanne Rosenberg** is a faculty associate at the Berkman Center for Internet & Society at Harvard University and a professor at Baruch College and at City University of New York's Graduate School of Journalism. Her areas of expertise include: 1. Media law and empowering those engaged in public interest journalism with media law education and resources; 2. News literacy and information quality education to help teenagers and adults become more discerning consumers of and contributors to news information. A journalist and attorney, Geanne directs the Harnisch Collaborative Future of Journalism Projects and is the principal investigator of McCormick Foundation, Carnegie Corporation, and David and Katherine Moore Family Foundation-funded journalism projects relating to media law, journalism education, citizen journalism and news literacy. She was founding chair of Baruch's Department of Journalism and the Writing Professions. Geanne has written for The New York Times, the National Law Journal, Columbia Journalism Review, Nieman Journalism Lab and many other news outlets, including business and local, community-oriented news outlets. She authored and produced Knight Citizen News Network's Top Ten Rules for Limiting Legal Risk and the Citizen Journalist's Guide to Open Government and co-authored two Poynter Institute News University media law modules, including Online Media Law: The Basics for Bloggers and Other Online Publishers and newly released Newsgathering Law & Liability: A Guide for Reporting.

**Eleanor Saitta** is a hacker, designer, artist, writer, and barbarian. She makes a living and a vocation of understanding how complex systems operate and redesigning them to work, or at least fail, better. Her work is transdisciplinary, using everything from electronics, software, and paint to social rules and words as media with which to explore and shape our interactions with the world. Her focuses include the seamless integration of technology into the lived experience, the humanity of objects and the built environment, and systemic resilience and conviviality.

Eleanor is Principal Security Engineer at the Open Internet Tools Project (OpenITP), directing the OpenITP Peer Review Board for open source software and working on adversary modeling. She is also Technical Director at the International Modern Media Institute (IMMI), a member of the advisory board at Geeks Without Bounds

(GWOB), and works on occasion as a Senior Security Associate with Stach & Liu. She is a founder of the Constitutional Analysis Support Team (CAST), previously co-founded the Seattle-based Public N3rd Area hacker space, and works on the Trike and Briar projects.

**Frank Smyth** is the Founder and Executive Director of Global Journalist Security, a new consulting and training firm dedicating to bringing integrated physical, digital and emotional self-care awareness and training to journalists and human rights activists operating in repressive environments. He is also the Senior Advisor for Journalist Security at the nonprofit Committee to Protect Journalists and the lead author of CPJ's Journalist Security Guide released this year and translated into English, Spanish, French and Arabic. Smyth has reported from nations including El Salvador, Guatemala, Colombia, Eritrea, Ethiopia, Sudan, Jordan and Iraq, where, in 1991, he was imprisoned for 18 days. He has also investigated arms trafficking for Human Rights Watch, and is the author of the HRW report, Arming Rwanda, released on the eve of the nation's 1994 genocide. More recently, Smyth wrote Painting the Maya Red: Military Doctrine and Speech in Guatemala's Genocidal Acts, a study for the U.S. Memorial Holocaust Museum. He is also co-author of Dialogue and Armed Conflict: Negotiating the Civil War in El Salvador, and a contributor to Crimes of War: What the Public Should Know and The Iraq War Reader. His clips are posted at [www.franksmyth.com](http://www.franksmyth.com).

**Cole Stryker** is a writer and media strategist based in New York City. He is the author of Epic Win for Anonymous, the first book to tell the story of the Internet's memetic playground called 4chan and the hacktivist group Anonymous, from which it spawned. He also authored Hacking the Future, a broader history of anonymity as a social construct that dissects how identity brokers like Facebook and Google control and monetize your identity, and explains how recent manifestations of anonymous activism and free speech are raging against these systems of control. Stryker's writing has appeared in The Daily Beast, Salon, Vice, Boing Boing, The NY Observer, The Huffington Post, Storyboard, Rhizome, Slacktory, Nerve, Popmatters and elsewhere.



**Nabiha Syed** (Moderator) is a media lawyer, writer, and freedom of information activist. Her research interests include transparency, surveillance, drone technology, and the interplay between national security and civil liberties. Recently, she completed a term as First Amendment Fellow at The New York Times. She holds a JD from Yale Law School and an M.St in Comparative Media Law from Oxford University, which she attended as a Marshall Scholar.

**Rebecca Wexler** (Moderator) is an independent documentary filmmaker, Visiting Fellow at the Information Society Project, and co-founder of the Yale Visual Law Project, an initiative to teach documentary film production to law students. She recently returned from serving as a Fulbright Research and Lecturing Scholar in Sri Lanka, where she worked with the Tulana Media Unit to conduct workshops in media production and critical media literacy for rural youth from the former conflict zones. Rebecca completed her B.A. in History of Science and Women's Studies at Harvard College, and her M.Phil in History and Philosophy of Science and Technology at Cambridge University, where she studied as a Gates-Cambridge Fellow.

Information Society Project  
Yale Law School



To register for the event, go to:  
[www.yaleisp.org/event/location-tracking-and-biometrics-conference](http://www.yaleisp.org/event/location-tracking-and-biometrics-conference)

Supported by the Thomson Reuters Initiative on Law and Technology



THOMSON REUTERS

# Location Tracking and Biometrics Conference

Video available at

<https://www.youtube.com/watch?v=OwutGSjNQ0k>

The Location Tracking and Biometrics Conference will take place on Sunday, March 3 at Yale Law School. Judges, policymakers, practitioners, academics, and other experts will gather to consider what comes next after last year's Supreme Court decision in *U.S. v. Jones*, about the constitutionality of GPS-tracking vehicles without a warrant. They will discuss various forms of location tracking and the implications of biometric identification.

This conference is jointly sponsored by the [Information Society Project](#) and [NYU's Engelberg Center](#), and is supported by the [Thomson Reuters Initiative on Law and Technology](#).

## **Location Tracking & Biometrics Agenda:**

8:30 -9:00 Breakfast is available

9:00-9:20 **Technologies of Tracking: An Introduction**

[Christopher Soghoian](#)

9:30-11:00 **Panel 1: The Fourth Amendment and tracking after *U.S. v. Jones***

Panelists: [Susan Freiwald](#), [David Gray](#), Chief Judge Alex Kozinski, [Priscilla Smith](#)

Moderated by [Jameel Jaffer](#)

11:00-11:20 Coffee

11:30-1:00 **Panel 2: Cellular phones and mobile privacy: Government requests to carriers**

Panelists: [Kevin Bankston](#), [Ed McNicholas](#), [Stephanie Pell](#), Judge Stephen Smith

Moderated by [Barton Gellman](#)

1:00-2:30 Lunch

**2:30-3:30 Panel 3: Cellular phones and mobile privacy: Direct government surveillance (Stingrays)**

Panelists: [Alan Butler](#), [Judge Brian Owsley](#), [Christopher Soghoian](#)

Moderated by [Jennifer Valentino-DeVries](#)

3:30-3:45 Coffee

**4:00-6:00 Panel 4: Nontrespasory tracking: Biometrics, license plate readers, and drones**

Panelists: [Alvaro Bedoya](#), [Catherine Crump](#), [Laura K. Donohue](#), [Ralph Gross](#), [Travis Hall](#), [Jennifer Lynch](#), [Nabiha Syed](#)

Moderated by [Noah Shachtman](#)

## **Speaker Biographies**

### **Kevin Bankston**

**Senior Counsel and Director of CDT's Free Expression Project**

Twitter: [@kevinbankston](#)

Kevin Bankston is Senior Counsel and Director of the Free Expression Project at the Center for Democracy & Technology, a Washington, DC-based non-profit organization dedicated to promoting democratic values and constitutional liberties in the digital age. Prior to joining CDT in February 2012, he was a Senior Staff Attorney for the Electronic Frontier Foundation (EFF) specializing in free speech and privacy law with a focus on government surveillance, Internet privacy, and location privacy. At EFF, he regularly litigated issues surrounding location privacy and electronic surveillance, and was a lead counsel in EFF's lawsuits against the National Security Agency and AT&T challenging the legality of the NSA's warrantless wiretapping program. From 2003-05, he was EFF's Equal Justice Works/Bruce J. Ennis Fellow, studying the impact of post-9/11 anti-terrorism surveillance initiatives on online privacy and free expression. Before joining EFF, he was the Justice William J. Brennan First Amendment Fellow for the American Civil Liberties Union, where he

litigated Internet-related free speech cases. He received his J.D. in 2001 from the University of Southern California and his undergraduate degree from the University of Texas.

**Alvaro Bedoya**  
**Chief Counsel to Sen. Al Franken**

Alvaro M. Bedoya is Chief Counsel to Senator Al Franken (D.-Minn.) and to the Senate Judiciary Subcommittee on Privacy, Technology and the Law, which Sen. Franken chairs. In this capacity, Alvaro is the lead advisor to the Senator on all matters relating to digital privacy and cybersecurity, and has organized hearings focusing on location-based services, facial recognition technology, video records privacy and sensitive health data. Alvaro is also the lead advisor to the Senator on immigration, civil rights and constitutional law. Prior to the Senate, Alvaro was an Associate at Wilmer, Cutler, Pickering, Hale and Dorr LLP. He is the co-founder of the Esperanza Education Fund, a non-profit, status-blind college scholarship for immigrant students in the capital region. He holds a B.A. from Harvard College and a J.D. from Yale Law School, where he was an editor of the Yale Law Journal.

**Alan Butler**  
**Appellate Advocacy Counsel, Electronic Privacy Information Center (EPIC)**

Alan Butler is Appellate Advocacy Counsel at the Electronic Privacy Information Center in Washington, DC. He received his B.A. in Economics, magna cum laude, from Washington University in St. Louis and his J.D. from UCLA School of Law, where he was the Chief Technology Editor for the Journal of Law and Technology and the Entertainment Law Review. He currently manages the Amicus Project at EPIC and has drafted briefs in important privacy cases before the U.S. Supreme Court, federal appellate courts, and state supreme courts. He recently argued before the New Jersey Supreme Court in *State v. Earls* regarding Fourth Amendment privacy interests in cell phone location information. He is also managing EPIC's Freedom of Information Act lawsuit against the Federal Bureau of Investigation for documents related to the use of Stingray surveillance technology. The documents he obtained from the FBI have been featured in Slate.



**Catherine Crump**  
**Staff Attorney, ACLU**  
Twitter: @CatherineNCrump

Catherine Crump is a staff attorney with the American Civil Liberties Union's Speech, Privacy and Technology Project. She litigates issues ranging from challenges to invasive government surveillance, to protection of the right to engage in political protest, to accountability for police officers' use of excessive force. Her current cases include constitutional challenges to the government's assertions that it may legally engage in suspicionless searches of laptops at the international border and track the locations of cell phones without a warrant. Prior to joining the ACLU, Catherine clerked for the Hon. M. Margaret McKeown, a judge on U.S. Court of Appeals for the 9th Circuit. Catherine graduated from Stanford University and Stanford Law School. She is a non-residential fellow with the Stanford Center for Internet and Society, and an adjunct clinical professor at NYU Law School.

**Laura K. Donohue**  
**Professor at Law, Georgetown Law**  
**Faculty Affiliate, Georgetown's Center on National Security and the Law**

Laura K. Donohue is a Professor of Law at Georgetown Law and a Faculty Affiliate of Georgetown's Center on National Security and the Law. She writes on the history of national security and counterterrorist law in the United States and United Kingdom. Her most recent book, *The Cost of Counterterrorism: Power, Politics, and Liberty* (Cambridge University Press, April 2008) analyzes the impact of American and British counterterrorist law on life, liberty, property, privacy, and free speech. She is currently writing a book on the history of national security law. Her articles focus on biometric identification; state secrets; surveillance, data collection, and analysis; extended detention and interrogation; antiterrorist finance and material support; biological weapons; scientific speech; and the history of quarantine law.

Professor Donohue has held fellowships at Stanford Law School's

Center for Constitutional Law, Stanford University's Center for International Security and Cooperation, and Harvard University's John F. Kennedy School of Government, where she was a Fellow in the International Security Program as well as the Executive Session for Domestic Preparedness. In 2001 the Carnegie Corporation named her to its Scholars Program, funding the project, Security and Freedom in the Face of Terrorism. She took up the award at Stanford, where she taught in the Departments of History and Political Science and directed a project for the United States Departments of Justice and State and, later, Homeland Security, on mass-casualty terrorist incidents. In 2008–09 she clerked for Judge John T. Noonan, Ninth Circuit Court of Appeals.

Professor Donohue is a Life Member of the Council on Foreign Relations, an Advisory Board Member of the ABA Standing Committee on Law and National Security, and an Advisory Board Member of the Electronic Privacy Information Center (EPIC). She obtained her AB in Philosophy (with Honors) from Dartmouth College, her MA in Peace Studies (with Distinction) from the University of Ulster, Northern Ireland, her JD (with Distinction) from Stanford Law School, and her PhD in History from the University of Cambridge, England.

### **Susan Freiwald**

#### **Professor of Law, University of San Francisco School of Law**

Susan Freiwald is a Professor of Law at the University of San Francisco School of Law where she teaches Cyberspace Law, Information Privacy Law, and Contracts.

Freiwald received both her BA and JD from Harvard University, magna cum laude. She served as the Books and Commentaries Editor of the Harvard Law Review. After law school, Freiwald clerked for the Hon. Amalya L. Kearse, U.S. Court of Appeals, Second Circuit and worked as an associate for Cleary, Gottlieb, Steen & Hamilton. She served as an Assistant Professor in the Legal Studies Department at the Wharton School of the University of Pennsylvania before joining the faculty of the University of San Francisco.



A former software developer, Freiwald has published and presented widely on the intersection of high technology and law, focusing primarily on online surveillance and the Fourth Amendment regulation of communications privacy. She has also written or co-written amicus briefs in federal district and appellate courts, including in the Warshak case in the Sixth Circuit (2010), which found a reasonable expectation of privacy in stored e-mail. Freiwald, as amicus curiae, has also argued that the Fourth Amendment requires a warrant for law enforcement access to cell site location data in cases before the Third Circuit (2010) and the Fifth Circuit (2012). Freiwald regularly speaks to the press on current issues involving cyberlaw and currently advises lawyers and companies on the electronic surveillance laws. She recently received the most votes at the Fifth Annual Privacy Law Scholars Conference (June 2012) for her proposed: “Four Factor Test” in the Government Surveillance Competition: From Jones to Drones.

### **Barton Gellman**

**Lecturer and Author in Residence; Woodrow Wilson School,  
Princeton University**

Twitter: @bartongellman

Barton Gellman, a Pulitzer Prize winning writer, holds appointments as Lecturer and Author in Residence at Princeton’s Woodrow Wilson School, and as a Law and National Security Fellow at the Brennan Center for Justice at New York University Law School. He is researching a new book on digital privacy and security, with a focus on the overlapping surveillance interests of governments and private sector information brokers.

His previous books include Angler: The Cheney Vice Presidency, (New York Times Best Books of 2008) and Contending with Kennan: Toward a Philosophy of American Power.

At Time magazine, where he is contributing editor at large, Gellman writes cover stories about politics, government and national security, and he created the Counterspy blog on surveillance self-defense. In his previous career at the Washington Post, Gellman served tours as legal, military, diplomatic and Middle East correspondent.

His professional honors include two Pulitzer Prizes, the Los Angeles Times Book Prize, the George Polk Award, the Henry Luce Award, Harvard's Goldsmith Prize for investigative reporting and the Sigma Delta Chi medallion from the Society of Professional Journalists. Gellman graduated with highest honors from Princeton and earned a master's degree in politics at University College, Oxford, as a Rhodes Scholar.

Online he can be found at [bartongellman.com](http://bartongellman.com), [@bartongellman](https://twitter.com/bartongellman) and [time.com/counterspy](https://www.time.com/counterspy).

### **David Gray**

**Associate Professor of Law, Univ. Maryland Francis King Carey School of Law**

David Gray teaches criminal law, criminal procedure, international criminal law, and jurisprudence. He was voted “Professor of the Year” in 2012. His scholarly interests focus on transitional justice, criminal law, criminal procedure, and constitutional theory.

In addition to his own scholarship, Professor Gray works closely with students to develop and publish their work. Recent work written by or with his students has appeared in the Encyclopedia of Criminology and Criminal Justice, the New England Law Review, the Federal Sentencing Reporter, the Vermont Law Review, the Maryland Law Review, and in edited collections. Consistent with the Law School's mission as a public educational institution, Professor Gray frequently provides expert commentary for local and national media outlets.

Prior to joining the School of Law Faculty, Professor Gray practiced law at Williams & Connolly LLP, was a Visiting Assistant Professor at Duke University School of Law, and served as a clerk in the chambers of The Honorable Chester J. Straub, U.S. Court of Appeals for the Second Circuit, and The Honorable Charles S. Haight, Jr., U.S. District Court for the Southern District of New York.

### **Ralph Gross**

**Postdoctoral Fellow; Heinz College Carnegie Mellon University**

Ralph Gross is a postdoctoral fellow at Carnegie Mellon University's Heinz College, working with Professor Alessandro Acquisti. He is also founding partner and chief scientist of Disruptive Robotics, LLC. Mr. Gross's research interests are in the areas of data privacy and biometrics, with a focus on face processing, including face modeling, tracking, and recognition. Mr. Gross's work with Professor Acquisti has been featured in national and international media outlets, including the Economist, the New York Times, the Wall Street Journal, NPR, and CNN. Their 2009 study on the predictability of Social Security numbers (SSNs) was featured in the "Year in Ideas" issue of the NYT Magazine.

Mr. Gross holds a Ph.D. and a Master's degree from Carnegie Mellon University and a Master's degree (Diplom) from the Karlsruhe Institute of Technology (formerly University of Karlsruhe).

### **Travis Hall**

#### **PhD Candidate, New York University**

Twitter handle: @travisrhall

Travis is a PhD candidate in the department of Media, Culture and Communication at New York University. His dissertation research focuses on state practices of identification, specifically those that use bodies as the media of identity, e.g. tattoos and biometrics. To do so, he has studied the use of tattooing in Auschwitz, the deployment of mobile biometrics by the US military in Iraq and Afghanistan, the Secure Communities program of the DHS and FBI, and the development of the Unique ID project in India. Travis has consulted activist immigration and privacy rights activists groups on government ID programs, and is an IEEE Certified Biometrics Professional. Travis speaks German, Russian, and a little bit of bad Japanese.

### **Jameel Jaffer**

#### **Deputy Legal Director, ACLU**

Twitter: @JameelJaffer

Jameel Jaffer is Deputy Legal Director at the American Civil Liberties Union and Director of the ACLU's Center for Democracy, which houses the ACLU's work on national security; human rights; and

speech, privacy, and technology. Jaffer joined the staff of the ACLU in 2002 and directed the ACLU's National Security Project between 2007 and 2010. He continues to maintain an active litigation docket, and among the cases he is currently litigating are *Al-Aulaqi v. Obama*, a challenge to the CIA's authority to carry out "targeted killings" outside the context of armed conflict; *Amnesty v. Clapper*, a challenge to warrantless wiretapping under the FISA Amendments Act; and *ACLU v. Department of Defense*, litigation under the Freedom of Information Act for records relating to the Bush administration's torture program. He is currently on a writing leave from the ACLU and is a Fellow at the Open Society Foundations and a Visiting Fellow at Yale Law School's Information Society Project.

**Chief Judge Alex Kozinski**  
**U.S. Court of Appeals for the Ninth Circuit**

Judge Kozinski was appointed United States Circuit Judge for the Ninth Circuit on November 7, 1985, and became Chief Judge on November 30, 2007. He graduated from UCLA, receiving an A.B. degree in 1972, and from UCLA Law School, receiving a J.D. degree in 1975.

Prior to his appointment to the appellate bench, Judge Kozinski served as Chief Judge of the United States Claims Court, 1982-85; Special Counsel, Merit Systems Protection Board, 1981-1982; Assistant Counsel, Office of Counsel to the President, 1981; Deputy Legal Counsel, Office of President-Elect Reagan, 1980-81; Attorney, Covington & Burling, 1979-81; Attorney, Forry Golbert Singer & Gelles, 1977-79; Law Clerk to Chief Justice Warren E. Burger, 1976-77; and Law Clerk to Circuit Judge Anthony M. Kennedy, 1975-76.

**Jennifer Lynch**  
**Staff Attorney, Electronic Frontier Foundation**

Jennifer Lynch is a staff attorney with the Electronic Frontier Foundation and works on open government, transparency and privacy issues as part of EFF's Transparency Project. In addition to government transparency, Jennifer has written and spoken frequently on government surveillance programs, domestic drones, intelligence

community misconduct, and biometrics, including testifying about facial recognition before the Senate Subcommittee on Privacy, Technology and the Law. Prior to joining EFF, Jennifer was the Clinical Teaching Fellow with the Samuelson Law, Technology & Public Policy Clinic at UC Berkeley School of Law. At the Samuelson Clinic, Jennifer specialized in privacy and intellectual property issues, including investigations on social media, privacy and the smart electrical grid, digital books, and open source regimes for biotech. Before the Clinic, Jennifer practiced with Bingham McCutchen in San Francisco and clerked for Judge A. Howard Matz in the Central District of California. She earned both her undergraduate and law degrees from UC Berkeley. She has published academically on identity theft and phishing attacks (20 Berkeley Tech. L.J. 259) and sovereign immunity in civil rights cases (62 Fla. L. Rev. 203).

**Ed McNicholas**  
**Partner, Sidley Austin LLP**

Edward R. McNicholas is a partner in the Washington, DC office of the international law firm Sidley Austin LLP and a global coordinator of its Privacy, Data Security, and Information Law practice. His practice focuses on clients facing complex information technology, constitutional and privacy issues. He has significant experience with a wide range of Internet and information law matters involving privacy and data protection, electronic surveillance, information security, cybersecurity, cloud computing, e-commerce, and national security. United States and Global Chambers rankings, among others, have recognized his experience in Privacy and Data Security law for several years. Mr. McNicholas previously served as an Associate Counsel to President Clinton, where he advised senior White House staff regarding various Independent Counsel, congressional and grand jury investigations

Mr. McNicholas received his J.D. from Harvard Law School, where he was an editor of the Harvard Law Review. He received his A.B. from Princeton University, and served as a clerk for the Honorable Paul Niemeyer on the U.S. Court of Appeals for the Fourth Circuit. He currently serves on the Advisory Board for the BNA Privacy &

Security Law Report and as Chairman of the Board for the National Law Center on Homeless and Poverty.

**Judge Brian Owsley**

**U.S. Magistrate Judge, Southern District of Texas**

Brian L. Owsley is a United States Magistrate serving in the Corpus Christi Division of the Southern District of Texas. Owsley received a B.A. from the University of Notre Dame with honors, a J.D. from Columbia University School of Law, where he was a Harlan Fiske Stone Scholar, and an M.I.A. from Columbia University's School of International and Public Affairs.

Immediately prior joining the bench, he served as a trial attorney in the Civil Division at the United States Department of Justice. He also previously served as a judicial law clerk for the Hon. Martha Craig Daughtrey, United States Court of Appeals for the Sixth Circuit.

**Stephanie K. Pell**

**Founder of SKP Strategies, LLC**

Stephanie K. Pell, the founder of SKP Strategies, LLC, provides legislative, policy and government relations consulting across the cluster of communications privacy issues found at the nexus of law enforcement, national security, commercial and consumer interests, including: electronic surveillance and wiretapping; location-based information and services; cloud computing; cybersecurity; information sharing; and data retention issues. She also writes about privacy and surveillance law, most recently publishing an article entitled, Systematic Government Access to Private Sector Data in the United States, *International Data Privacy Law* (Oxford University Press 2012) and co-authoring another with Christopher Soghoian entitled, Can You See Me Now?: Towards Reasonable Standards for Law Enforcement Access to Location Data That Congress Could Enact, 27 *Berkeley Tech. L.J.* 117 (2012). In October 2012, she became a Non-resident Fellow at Stanford Law School's Center for Internet and Society and, in conjunction with that affiliation, she has authored a forthcoming article about the legal, technological, political and policy implications of *US v. Jones*, 132 S.Ct. 945 (2012) entitled *Jonesing For A Privacy Mandate, Getting A Technology Fix—Doctrine To Follow*,

which will be published in the April 2013 symposium edition of the North Carolina Journal of Law and Technology.

Prior to starting SKP Strategies, Stephanie served as Counsel to the Judiciary Committee of the U.S. House of Representatives (on detail from the Department of Justice), where she was the Democratic Majority's lead counsel on Electronic Communications Privacy Act (ECPA) reform and PATRIOT Act reauthorization during the 111th Congress. Prior to leaving DOJ in January 2011, Stephanie had been a federal prosecutor for over fourteen years, working as a Senior Counsel to the Deputy Attorney General, as a Counsel to the Assistant Attorney General of the National Security Division, and as an Assistant U.S. Attorney in the U.S. Attorney's Office for the Southern District of Florida.

She was a lead prosecutor in *U.S. v. Jose Padilla* (American Citizen detained as an enemy combatant prior to criminal indictment and trial), for which she received the Attorney General's Exceptional Service Award, and in *U.S. v. Conor Claxton* (IRA operatives who purchased weapons in South Florida and smuggled them into Belfast, Northern Ireland during peace process negotiations).

### **Noah Shachtman**

#### **Wired Magazine**

Twitter: @dangerroom

Noah Shachtman is a contributing editor at Wired magazine and the editor of its national security blog, Danger Room, which won the 2012 National Magazine Award for Reporting in Digital Media. A Non-Resident Fellow at the Brookings Institution's 21st Century Defense Initiative, he has written about technology and national security for The New York Times Magazine, The Washington Post, and The Wall Street Journal, among others. He has reported from Afghanistan, Israel, Iraq, Qatar, Kuwait, Russia, and, of course, the Pentagon. The offices of the Undersecretary of Defense for Intelligence, the Undersecretary of Defense for Policy, and the Director of National Intelligence have all asked him to contribute to discussions on cyber security and emerging threats.

**Judge Stephen Wm. Smith**  
**U.S. Magistrate Judge, Southern District of Texas**

Judge Stephen Wm. Smith was reappointed to his second term as United States Magistrate Judge on July 22, 2012. Education: University of Virginia School of Law, J.D. 1977; Vanderbilt University, B.A. Philosophy 1973. Work: Magistrate Judge, U.S. District Court, Southern District of Texas, Houston, 2004–. Adjunct Professor of Law, Thurgood Marshall School of Law, Texas Southern University, 2011–; University of Houston Law Center, 2010–; South Texas College of Law, 2009. Attorney, Fulbright & Jaworski LLP, Houston, Texas, 1978–2004. (Board certified, Labor and Employment Law 1985). Law Clerk, United States Court of Claims, Washington D.C., 1977–78.

**Christopher Soghoian**  
**Principal Technologist and Senior Policy Analyst, ACLU**  
**Visiting Fellow, Information Society Project**  
Twitter: @csoghoian

Christopher Soghoian is a privacy researcher and activist, working at the intersection of technology, law and policy. He is a Principal Technologist and Senior Policy Analyst at the American Civil Liberties Union and is based in Washington, D.C.

Soghoian completed his Ph.D. at Indiana University in 2012, which focused on the role that third party service providers play in facilitating law enforcement surveillance of their customers. In order to gather data, he has made extensive use of the Freedom of Information Act, sued the Department of Justice pro se, and used several other investigative research methods.

His research has appeared in publications including the Berkeley Technology Law Journal and been cited by several federal courts, including the 9th Circuit Court of Appeals. Between 2009–2010, he was the first ever in-house technologist at the Federal Trade Commission (FTC)'s Division of Privacy and Identity Protection, where he worked on investigations of Facebook, Twitter, MySpace and Netflix. Prior to joining the FTC, he co-created the Do Not Track



privacy anti-tracking mechanism now adopted by all of the major web browsers.

He is a TEDGlobal 2012 Fellow, was an Open Society Foundations Fellow between 2011-2012, and was a Student Fellow at the Berkman Center for Internet & Society at Harvard University between 2008-2009.

### **Nabiha Syed**

**First Amendment lawyer, Levine Sullivan Koch & Schulz**

Twitter: @nabihasyed

Nabiha Syed is a First Amendment lawyer with interests in transparency, surveillance, and emerging media technologies. A former First Amendment Fellow for The New York Times, Nabiha currently works at Levine Sullivan Koch & Schulz and is also a Yale Information Society Project Fellow. She is a co-founder of the Media Freedom and Information Access Clinic at Yale. More recently, her projects include the Journalism Security Task Force, the soon-to-launch Drones U, Anonymusing, and the difficult task of locating the most delicious tacos in every city she visits. She holds a J.D. from Yale Law School, and a Master's in Comparative Media Law from Oxford University, which she attended as a Marshall Scholar.

### **Jennifer Valentino-DeVries**

**Reporter and Editor, The Wall Street Journal**

Twitter: @jenvalentino

Jennifer Valentino-DeVries is a reporter and editor at The Wall Street Journal. Since 2010, she has been a key member of the team producing the What They Know series on digital privacy, which in 2012 was a finalist for the Pulitzer Prize in explanatory reporting. Her current work focuses on technological tracking and surveillance and the impact this has on business, society and the law. Prior to joining the Journal, Jennifer received a master's degree from the Woodrow Wilson School of Public and International Affairs at Princeton and a BA from the University of Texas.

# **Foreign Affairs in the Internet Age (FAIA) Internet Governance Conference**

## **April 12, 2013**

Foreign Affairs in the Internet Age is an initiative on how the Internet Age affects foreign affairs law, and how foreign affairs law affects the Internet. As the Internet has expanded into a global entity, it will increasingly be globally regulated. The networked digital age also changes how international law-making is conducted: it affects how we imagine accountability, secrecy, and democratic participation in treaty negotiations.

The initiative addresses both the substance of foreign policy that affects Internet governance, and how the Internet has changed the way foreign policy is conducted. It represents a collaboration between the Information Society Project (ISP) and scholars of international law and politics at Yale Law School. This event is sponsored by the Oscar M. Ruebhausen Fund.

\*\*\*\*\*

Breakfast (8:30-9:00): Yale Law School, 40 Ashmun Street, 4th Floor – Room 424

Session 1 (9:00-10:30): What are the central goals of internet governance? What are the tradeoffs between the different aims of the system? How should we manage them? (Moderator: Oona Hathaway)

- Jackie Ruff, Verizon
- Emma Llanso, CDT, *Civil Society Participation in International Internet Governance Institutions: Barriers to Entry*
- Ramesh Subramanian, Quinnipiac & Yale ISP, *India and Internet Governance: A Developing Country Perspective*

*Coffee Break* (10:30-10:45)

Session 2 (10:45-12:15): What are strengths and shortcomings of the current system of internet governance? (Moderator: David Grewal)

- Gary Fowle, ITU, *The Internet and Internet Governance; an International Perspective*

- Anupam Chander, UCGDavis, *Can the WTO Govern the Internet?*
- Adriane LaPointe, U.S. Department of State, (no paper attached).

*Lunch* (12:15-1:30): Yale Law School Faculty Dining Room

Session 3 (1:30-3:15): What are the tradeoffs between control and security?

(Moderator: Amy Kapczynski)

- Jeff Brueggeman, AT&T, *The Multi Stakeholder Model: An Innovative and Collaborative Approach to Internet Policymaking*
- Anup K. Ghosh, GMU, *Cyber Warfare, Global Trade Warfare, and Effective Governance*
- Laura DeNardis, AU, *Technologically Mediated Conflicts of Internet Governance*

*Coffee Break* (3:15-3:30)

Session 4 (3:30-5:00): What specific institutional reforms would improve internet governance now and in the future? (Moderator: Jack Balkin)

Please note: The papers are not for distribution and may not be cited or quoted without the specific permission of the author. All conference discussions—both formal and informal—will follow Chatham House Rules.

## Internet Governance Biographies

### Jack Balkin

Jack M. Balkin is Knight Professor of Constitutional Law and the First Amendment at Yale Law School. Professor Balkin received his Ph.D. in philosophy from Cambridge University, and his A.B. and J.D. degrees from Harvard University. He served as a clerk for Judge Carolyn Dineen King of the United States Court of Appeals for the Fifth Circuit. He is a member of the American Academy of Arts and Sciences. Professor Balkin writes political and legal commentary at the weblog [Balkinization](#). He is the founder and director of the Information Society Project at Yale Law School, an interdisciplinary center that studies law and the new information technologies. His books include *Cultural Software: A Theory of Ideology*, *The Laws of Change: I Ching and the Philosophy of Life*, *Processes of Constitutional Decisionmaking* (5th ed., with Brest, Levinson, Amar and Siegel), *Legal Canons* (with Sanford Levinson), *What Brown v. Board of Education Should Have Said*, and *What Roe v. Wade Should Have Said*.

### Jeff Brueggeman

Jeff Brueggeman is Vice President-Public Policy and Deputy Chief Privacy Officer for AT&T. In this role, he is responsible for developing and coordinating AT&T's public policy positions on privacy, cybersecurity and Internet issues.

Jeff leads the team that manages AT&T's privacy policies and provides guidance on data privacy and security issues. Jeff's team also supports AT&T's business in the operation of its global Internet network and deployment of cloud computing and other emerging services.

Jeff participates in a wide range of legislative, regulatory and policy development proceedings involving privacy, cybersecurity and Internet issues. In addition, he represents AT&T in various international events and organizations related to Internet governance, including the Internet Governance Forum and ICANN.

Prior to joining AT&T, Jeff worked as a telecommunications attorney in private practice.

## **Anupam Chander**

Professor Chander is a leading scholar in the law of globalization and digitization.

In Spring 2008, he was a Visiting Professor at Yale Law School, and during the 2008-2009 school year, he was a Visiting Professor at the University of Chicago Law School. In 2004, he was a Visiting Professor at Stanford Law School, and in 2003, he was a Visiting Professor at Cornell Law School. He began teaching as an Associate Professor at Arizona State University.

A graduate of Harvard College and Yale Law School, Professor Chander clerked for Chief Judge Jon O. Newman of the Second Circuit Court of Appeals and Judge William A. Norris of the Ninth Circuit. He practiced law in New York and Hong Kong with the firm of Cleary, Gottlieb, Steen & Hamilton, representing foreign sovereigns in international financial transactions.

He has written widely in international law, cyberlaw and corporate law. His recent works include: *Trade 2.0*, 34 *Yale J. Int'l L.* 281 (2009); *Everyone's a Superhero: A Cultural Theory of Mary Sue Fan Fiction as Fair Use*, 95 *Cal. L. Rev.* 597 (2007) (with Madhavi Sunder); *Globalization and Distrust*, *Yale Law Journal* (2005); *Homeward Bound*, *N.Y.U. Law Review* (2005); *The Romance of the Public Domain*, *California Law Review* (2004); *Minorities, Shareholder and Otherwise*, *Yale Law Journal* (2003); *The New, New Property*, *Texas Law Review* (2003); *Whose Republic?*, *University of Chicago Law Review* (2002); and *Diaspora Bonds*, *N.Y.U. Law Review* (2001) (Ass'n of American Law Schools Scholarly Paper, Honorable Mention).

## **Laura DeNardis**

Dr. Laura DeNardis is a globally recognized Internet governance scholar and an Associate Professor in the School of Communication at American University in Washington, DC. Her books include *Opening Standards: The Global Politics of Interoperability* (MIT Press 2011); *Protocol Politics: The Globalization of Internet Governance* (MIT Press 2009); *Information Technology in Theory* (Thompson 2007 with Pelin Aksoy); and a forthcoming Yale University Press book on *Global Internet Governance*. She is an affiliated fellow of the Information Society Project at Yale Law School and served as its Executive Director from 2008-2012. She is a co-founder and co-series editor of the MIT Press Information Society book series and is a frequent keynote speaker at the world's most prestigious universities and institutions. She currently serves as the Vice-

Chair of the Global Internet Governance Academic Network. DeNardis has more than two decades of experience as an expert consultant in Internet governance to Fortune 500 companies, foundations, and government agencies. DeNardis holds an AB in Engineering Science from Dartmouth College, an MEng from Cornell University, a PhD in Science and Technology Studies from Virginia Tech, and was awarded a postdoctoral fellowship from Yale Law School.

#### Degrees

PhD in Science and Technology Studies, Virginia Tech, MEng, Cornell University, and AB in Engineering Science, Dartmouth College

#### **Gary Fowlie**

Gary Fowlie has been the head of the Liaison office of the International Telecommunication Union to the United Nations since 2009. ITU is the UN specialized agency for information and communication technology.

Mr. Fowlie is an Economist and Journalist. He was a Producer/Reporter for the news service of the Canadian Broadcasting Corporation for 10 years and a freelance reporter for The Economist.

Prior to joining the International Telecommunication Union in 2001, Mr. Fowlie worked as an Account Director for the technology practice of the global consulting firm Hill and Knowlton. His clients included Microsoft, SAP and many others.

Mr. Fowlie was responsible for communications for the UN World Summit on the Information Society (2003 and 2005) and from 2005 until 2009 was the Chief of Media Liaison for the United Nations in New York.

Mr. Fowlie is a graduate of the Universities of Alberta, Alabama and the London School of Economics. He has been a Part-time instructor in the School of Business at the British Columbia Institute of Technology since 1993.

#### **Anup Ghosh**

Anup Ghosh, Ph.D., is Founder and CEO at Invincea.

Prior to founding Invincea, he was a Program Manager at the Defense Advanced Research Projects Agency (DARPA) where he created and managed an extensive portfolio of cyber security programs. He has previously held roles as Chief Scientist in the Center for Secure Information Systems at George Mason University and as Vice President of Research at Cigital, Inc. Anup has published more than 40 peer-reviewed articles in cyber security journals. He is a frequent on-air contributor to CNN, CNBC, NPR and Bloomberg TV. A number of major media outlets carry his commentaries on cyber security issues including the Wall Street

Journal, New York Times, Forbes, Associated Press, FoxNews and USA Today. He was awarded the NSA's Frank Rowlett Trophy for Individual Contributions in 2005 and the Secretary of Defense Medal for Exceptional Public Service for his contributions while at DARPA. He is currently a member of the Naval Studies Board and the Air Force Scientific Advisory Board, informing the future of American cyber-defenses.

### **David Grewel**

David Singh Grewal is an Associate Professor of Law at Yale Law School. His teaching and research focus on international trade law, intellectual property law and biotechnology, and law and economics. He was a Junior Fellow of the Harvard University Society of Fellows and received his Ph.D. from the Harvard Government Department in 2010. His dissertation, "The Invention of the Economy: A History of Economic Thought," won Harvard's Robert Noxon Toppan Prize for best dissertation in political science and will be published as a book by Harvard University Press. His previous book, *Network Power: The Social Dynamics of Globalization*, was published by Yale University Press in 2008. He is a Faculty Fellow of the Information Society Project at Yale Law School and a member of the board of directors of the BioBricks Foundation. He holds B.A. and Ph.D. degrees from Harvard and a J.D. from Yale Law School.

### **Oona Hathaway**

Oona A. Hathaway is the Gerard C. and Bernice Latrobe Smith Professor of International Law and director of the [Center for Global Legal Challenges](#) at Yale Law School. She earned her B.A. summa cum laude at Harvard University in 1994 and her J.D. at Yale Law School, where she was Editor-in-Chief of the Yale Law Journal, in 1997. Before recently re-joining the faculty at Yale, she served as a Law Clerk for Justice Sandra Day O'Connor and for D.C. Circuit Judge Patricia Wald, held fellowships at Harvard University's Carr Center for Human Rights Policy and Center for the Ethics and the Professions, served as Associate Professor at Boston University School of Law, as Associate Professor at Yale Law School, and as Professor of Law at U.C. Berkeley. Her current research focuses on the intersection of domestic and international law. Her recent articles include "Presidential Power over International Law: Restoring the Balance" (*Yale Law Journal*), "Treaties' End: The Past, Present and Future of International Lawmaking in the United States" (*Yale Law Journal*), "Revisionism and Rationalism in International Law" (*Harvard Law Review*), "Between Power and Principle: An Integrated Theory of

International Law" (*Chicago Law Review*), "The Cost of Compliance" (*Stanford Law Review*), and "Do Human Rights Treaties Make a Difference?" (*Yale Law Journal*). Professor Hathaway received the Carnegie Scholars Award in 2004, serves on the Executive Committee of the MacMillan Center at Yale University, serves as a member of the Advisory Committee on International Law for the Legal Adviser at the United States Department of State, and has testified before Congress several times on legal issues surrounding the U.S. war in Iraq.

### **Amy Kapczynski**

Amy Kapczynski is an Associate Professor of Law at Yale Law School and director of the Global Health Justice Partnership. She joined the Yale Law faculty in January 2012. Her areas of research including information policy, intellectual property law, international law, and global health. Prior to coming to Yale, she taught at the University of California, Berkeley, School of Law. She also served as a law clerk to Justices Sandra Day O'Connor and Stephen G. Breyer at the U.S. Supreme Court, and to Judge Guido Calabresi on the U.S. Court of Appeals for the Second Circuit. She received her A.B. from Princeton University, M. Phil. from Cambridge University, M.A. from Queen Mary and Westfield College at University of London, and J.D. from Yale Law School.

### **Adriane LaPointe**

Adriane Lapointe is currently detailed from the National Security Agency to the State Department Office of the Cyber Coordinator, where she works on issues including internet governance and cyber capacity building. In her most recent assignment, she represented the White House on the U.S. Delegation to the World Conference on International Telecommunications (WCIT) for the Office of Science and Technology Policy. She was a Visiting Fellow in the Technology and Public Policy Program at the Center for Strategic and International Studies (CSIS) in Washington, D.C. from 2010 to 2011; while at CSIS she published papers on oversight/authorities for cybersecurity, on cybersecurity and privacy, and on the role of metaphor in the shaping of cyber policy. Her most recent NSA assignments have included 2 years as the Chief of Policy, Oversight, and Compliance in the NSA/CSS Threat Operations Center (NTOC), and 2 years as Special Assistant for Cyber to the NSA Director of Foreign Affairs. Dr. Lapointe started at NSA in 1998 as a cryptanalysis intern, and subsequent agency assignments included 3 years in NSA Policy, where she was the lead for information sharing, governance, and technology policy, and work in the SIGINT Forensics Lab, on the Chief Financial



Manager's staff, and on the staff of the Director of the National Security Agency. Prior to joining the Agency, Dr. Lapointe was an assistant professor of English at Auburn University and Director of Freshman Writing at Troy University; she is currently an adjunct professor at the University of Maryland School of Public Policy. Dr. Lapointe has an undergraduate degree from Emory University and received her Ph.D from the University of Chicago in 1986.

### **Emma J. Llansó**

Emma Llansó joined Center for Democracy & Technology in 2009 as an Equal Justice Works Fellow sponsored by the Bruce J. Ennis Foundation. Her fellowship project focused on analyzing legislative, regulatory, and policy proposals aimed at addressing online child safety and privacy concerns for their potential impact on free expression online. This project involved the full range of CDT's domestic free expression policy work, which includes amicus activity in First Amendment cases, defending Internet intermediary liability protections in the U.S. and abroad, and advocating for user-empowerment tools and digital media literacy for minors. As Policy Counsel, Emma continues to work on free expression policy with both the domestic Free Expression team and the Project on Global Internet Freedom.

Emma earned her J.D. from Yale Law School in 2009 and her B.A. in anthropology summa cum laude from the University of Delaware in 2006. She has been admitted to the New York State Bar.

### **Jacquelynn Ruff**

Jacquelynn (Jackie) Ruff is Vice President – International Public Policy and Regulatory Affairs for Verizon Communications. In addition to being a leading communications provider in the U.S., Verizon provides voice, data, and Internet services to customers in more than 150 countries. Ms. Ruff leads the group that is responsible for global public policy development, advocacy, and guidance. She directs activity within U.S. and international forums, such as the International Telecommunication Union, the OECD, APEC, and the Internet Governance Forum. She represents Verizon as a member of federal advisory committees to the U.S. Coordinator for International Communications and Information Policy at the Department of State and to the U.S. Trade Representative. She is also a member of the Boards of the U.S. Telecom Training Institute and the European-American Business Council, and participates in the Chief Regulatory Officers Group of the GSM Association.

Ms. Ruff joined Verizon in March 2004 from the International Bureau of the Federal Communications Commission (FCC), where she was Associate Chief and Chief of Staff for the Bureau. Ms. Ruff practiced with the communications and the Latin America groups of an international law firm. She also served on the staff of a United States Senate Committee. Ms. Ruff holds a JD from the Georgetown University Law Center, a Master's degree from Harvard University and a Bachelor's degree from Radcliffe College/Harvard University.

### **Ramesh Subramanian**

Ramesh Subramanian (B.Sc. in Applied Sciences, 1980, Madras University, India; P.G. Honors Dip. in Management, 1984, XLRI, India; M.B.A., 1990 and Ph.D., 1992, Rutgers University) has been the Gabriel Ferrucci Professor of Computer Information Systems at the School of Business, Quinnipiac University, Connecticut since 2002.

Dr. Subramanian came to QU from the IBM Advanced Technology Lab, where he was a Senior Software Engineer. At IBM, he led the project associated with the initial development of a new-generation collaboration tool which has since become IBM Community Tools Suite. He was also a project leader for the development of an intra-company P2P resource sharing prototype code-named "Mesh." He holds U.S. and international patents resulting from this work.

Dr. Subramanian's current research interests include Information Systems Security, History of Technology, ICT4D, Technology and Privacy Policy. He is especially interested in the intersection of security, privacy and politics, and has published several peer-reviewed articles and papers in the IEEE Annals of the History of Computing, European Business Review, Journal of Information Systems Security, IEEE Computing in Science and Engineering Journal, Communications of the IIMA, Information Systems Education Journal, etc. In 2007-2008, Dr. Subramanian was awarded a Fulbright Senior Researcher grant to study the effects and consequences of Internet spread in rural India. Since 2009, Dr. Subramanian has been a Visiting Fellow at the Yale Law School's "Information Society Project," where he researches on the intersection of security, privacy, public policy and law, and the history of computing.



YALE LAW SCHOOL

The Information Society Project

## Patent-Assertion Entities: Promoting or Stifling Innovation?



Tues. April 16, 2013  
12:00 - 2:00 pm  
Room 127  
Yale Law School

### Panelists:

- **Judge Timothy Dyk**, Court of Appeals for the Federal Circuit
- **Nathan Kelley**, Deputy Solicitor, USPTO
- **Colleen Chien** (Santa Clara), author of *Startups and Patent Trolls*
- **Michael Risch** (Villanova), author of *Patent Troll Myths*
- **Jason Schultz** (Berkeley), co-creator of the Defensive Patent License

### Moderator:

**Lisa Larrimore Ouellette**, Thomson Reuters Fellow,  
Information Society Project at Yale Law School

This event is co-sponsored by the Information Society Project and the *Yale Journal of Law & Technology* and funded through the generous support of the Kauffman Foundation.

*Lunch and presentation to be followed by discussion*

## **Patent-Assertion Entities: Promoting or stifling innovation?**

Tuesday, April 16, 12-2pm, in room 127 at Yale Law School

Video available at

<http://ylsqtss.law.yale.edu:8080/qtmedia/isp/ISPPatentPanel041613s.mov>

Rising concerns about patent-assertion entities (PAEs) or "patent trolls"—companies that use patents primarily to demand license fees, rather than to promote new technologies—have spilled into popular outlets such as NPR and the New York Times. In 2012, the majority of patent lawsuits were brought by PAEs. Even Judge Posner has weighed in on how to get rid of trolls and the tax they put on innovation. But defenders argue that PAEs actually promote innovation by helping small inventors prevent other companies from stealing their ideas. In fact, the term "troll" was coined by the founder of a PAE to refer to bad actors who extract nuisance settlements with specious patents; he argues that saying all patent assertion is bad is like concluding that all personal injury litigation is bad simply because some people game the system.

Because of the increasing prominence of PAEs in the patent system, in the America Invents Act, Congress specifically required the GAO to conduct a study on PAEs, including the cost of the suits they bring and their "benefit to commerce, if any." The report was due September 16, 2012, but has been repeatedly delayed. The DOJ and FTC also held hearings in December on PAEs, which included dueling panels on their costs and benefits. The recently reintroduced SHIELD Act, which would require certain PAEs to pay attorneys fees if they lose a patent lawsuit (but not collect them if they win), has been the subject of much commentary, including both praise and criticism.

Should anything be done about PAEs? What roll should courts, the PTO, and private parties play? How does the proliferation of university patents fit in? Is the SHIELD Act a good idea? What questions still need to be answered? Come hear thoughts from some

experts in the patent troll debates in a special lunchtime panel on Tuesday, April 16, 12-2pm, in room 127 at Yale Law School.

Lisa Larrimore Ouellette, a Thomson Reuters Fellow at the Information Society Project at Yale Law School, will moderate a discussion among these panelists:

- Nathan Kelley, Deputy Solicitor, USPTO
- Manny Schecter, Chief Patent Counsel, IBM
- Professor Michael Risch (Villanova)
- Professor Tun-Jen Chiang (George Mason)
- Christina Mulligan (Yale ISP)

This event is co-sponsored by the Information Society Project and the Yale Journal of Law & Technology and funded through the generous support of the Kauffman Foundation.

# Freedom of Expression Scholars Conference

## May 4-5, 2013

The Information Society Project at Yale Law School will host the first Freedom of Expression Scholars Conference (FESC) at Yale Law School on May 4-5, 2013. The FESC is sponsored by the Abrams Institute for Freedom of Expression.

The Floyd **Abrams Institute for Freedom of Expression** at Yale Law School promotes freedom of speech, freedom of the press, and access to information as informed by the values of democracy and human freedom. The Abrams Institute is made possible by a generous gift from Floyd Abrams, one of the country's leading experts in freedom of speech and press issues, who both graduated from and has taught at Yale Law School. It is administered by the Information Society Project, directed by Professor Jack Balkin. The Institute's mission is both practical and scholarly. It includes a [clinic](#) for Yale Law students to engage in litigation, draft model legislation, and advise lawmakers and policy makers on issues of media freedom and informational access. It promotes scholarship and law reform on emerging questions concerning both traditional and new media. The Institute also holds scholarly conferences and events at Yale on First Amendment issues and on related issues of access to information, Internet and media law, telecommunications, privacy, and intellectual property.

The conference brings scholars together to discuss their works-in-progress concerning freedom of speech, expression, press, association, petition, assembly, and related issues of knowledge and information policy.

The conference offers participants an opportunity to receive substantive feedback through group discussion. Each accepted paper will be assigned a discussant, who will lead discussion and provide

feedback to the author. Participants will be expected to read papers in advance, and to attend the entire conference.

### **List of Participants**

**Tabatha Abu El-Haj** - Associate Professor of Law, Drexel University School of Law

**Amy Adler** - Emily Kempin Professor of Law, NYU School of Law

**Marvin Ammori** - Bernard L. Schwartz Fellow, New America Foundation

**David Ardia** - Assistant Professor of Law, University of North Carolina School of Law

**Jack Balkin** - Knight Professor of Constitutional Law and the First Amendment, Yale Law School; Director, Yale Information Society Project

**Derek Bambauer** - Associate Professor of Law, University of Arizona College of Law

**Jane Bambauer** - Associate Professor of Law, University of Arizona College of Law

**Kevin Bankston** - Senior Counsel and Director of the Free Expression Project, Center for Democracy & Technology

**Mark Bartholomew** - Professor of Law, SUNY Buffalo Law School

**Ashutosh Bhagwat** - Professor of Law, UC Davis School of Law

**Josh Blackman** - Assistant Professor, South Texas College of Law

**Vincent Blasi** - Corliss Lamont Professor of Civil Liberties, Columbia Law School

**Ben Blink** - Policy Analyst, Free Expression and International Relations, Google

**Joseph Blocher** - Associate Professor, Duke Law School

**Rebecca Bolin** - Resident Fellow, Yale Information Society Project, Yale Law School

**Kiel Brennan-Marquez** - Schell Center Visiting Human Rights Fellow, Yale Law School

**Bruce Brown** - Executive Director, Reporters Committee for Freedom of the Press

**Alan Chen** - Professor of Law, University of Denver College of Law

**Bryan Choi** - Director of Law & Media, Yale Information Society

Project, Yale Law School

**Caroline Mala Corbin** - Associate Professor of Law, University of Miami School of Law

**Anjali Dalal** - Resident Fellow, Yale Information Society Project, Yale Law School

**Deven Desai** - Associate Professor of Law, Thomas Jefferson School of Law

**Stephen Feldman** - Jerry W. Housel / Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science, University of Wyoming College of Law

**Kristelia Garcia** - Frank H. Marks Fellow in Intellectual Property & Visiting Associate Professor, George Washington University School of Law

**David Goldberg** - Associate Fellow, Centre for Socio-Legal Studies, University of Oxford

**James Grimmelman** - Professor of Law, New York Law School

**Navid Hassanpour** - Ph.D. Candidate, Political Science, Yale University

**Thomas Healy** - Professor of Law, Seton Hall University School of Law

**Thomas Hochmann** - Associate Professor of Law, University of Reims Champagne-Ardenne (France)

**John Inazu** - Associate Professor of Law and Political Science, Washington University School of Law

**Margot Kaminski** - Executive Director, Yale Information Society Project, Yale Law School

**Amy Kapczynski** - Associate Professor of Law, Yale Law School; Director, Global Health Justice Partnership

**Leslie Kendrick** - Associate Professor of Law, University of Virginia School of Law

**Heidi Kitrosser** - Professor of Law, University of Minnesota Law School

**Adam Kolber** - Professor of Law, Brooklyn Law School

**Molly Land** - Associate Professor of Law, New York Law School

**Lyrissa Lidsky** - Stephen C. O'Connell Chair & Professor of Law, University of Florida College of Law

**Emma Llansó** - Policy Counsel, Center for Democracy & Technology



**Andrea Matwyshyn** - Assistant Professor, Legal Studies and Business Ethics, Wharton School, University of Pennsylvania

**Jason Mazzone** - Lynn H. Murray Faculty Scholar in Law, University of Illinois College of Law

**Kerry Monroe** - Ph.D. Candidate, Yale Law School

Christina Mulligan - Resident Fellow, Yale Information Society Project, Yale Law School

**Helen Norton** - Associate Dean for Academic Affairs and Associate Professor of Law, University of Colorado School of Law

**Mary-Rose Papandrea** - Associate Professor, Boston College Law School

**Frank Pasquale** - Schering-Plough Professor in Health Care Regulation & Enforcement, Seton Hall School of Law

Tamara Piety - Professor of Law, University of Tulsa College of Law

**Robert Post** - Dean and Sol & Lillian Goldman Professor of Law, Yale Law School

**David Pozen** - Associate Professor of Law, Columbia Law School

**Charles “Rocky” Rhodes** - Professor of Law, South Texas College of Law

**Neil Richards** - Professor of Law, Washington University School of Law

**Aaron Saiger** - Professor of Law, Fordham University School of Law

**Seana Shiffrin** - Professor of Philosophy and Pete Kameron Professor of Law and Social Justice, UCLA School of Law

**Adam Shinar** - S.J.D. Candidate, Harvard Law School

**Priscilla Smith** - Associate Research Scholar in Law and Senior Fellow, Program for the Study of Reproductive Justice, Yale Information Society Project, Yale Law School

**Anna Su** - S.J.D. Candidate, Harvard Law School

**Zephyr Teachout** - Associate Professor of Law, Fordham University School of Law

**Ioanna Tourkochoriti** - Lecturer, Committee on Degrees in Social Studies, Harvard University

**Alexander Tsesis** - Associate Professor of Law, Loyola University School of Law

**Andrew Tutt** - Student Fellow, Yale Information Society Project

**David Thaw** - Visiting Assistant Professor, University of Connecticut School of Law  
**Rebecca Tushnet** - Professor of Law, Georgetown University Law Center  
**Sonja West** - Associate Professor of Law, University of Georgia School of Law  
**Christopher Wong** - Executive Director, Engelberg Center on Innovation Law and Policy, NYU Law School  
**Felix Wu** - Associate Professor of Law, Cardozo School of Law

The basic workshop format will be as follows:  
 The discussant (not the author) will present the paper to the group and provide initial comments (no more than 10 minutes). The author may choose to respond at that point (no more than 5 minutes), and then the workshop will proceed into a roundtable discussion moderated by the discussant.  
 The expectation is that all workshop participants will have read the paper beforehand.

**Saturday, May 4, 2013**

*8:30 am - 9:00 am — Breakfast – Dining Hall*  
*9:00 am - 9:15 am — Welcome & Introduction – Room 129*  
*9:15 am - 10:30 am — First Breakout Session*

|                  |   |                        |          |
|------------------|---|------------------------|----------|
| Ashutosh Bhagwat | “ <a href="#">Terrorism and Associations</a> ”              | Discussant: John Inazu | Room 121 |
| Margot           | “ <a href="#">Copyright Crime and Punishment: The First</a> | Discussant: Jason      | Room     |

|                              |  |                                  |             |
|------------------------------|--|----------------------------------|-------------|
| Kaminski                     | <a href="#"><u>Amendment's Proportionality Problem</u></a>                             | Mazzone                          | 110         |
| Charles<br>"Rocky"<br>Rhodes | <a href="#"><u>"The Speaker and the Speech: Dimensions of the First Amendment"</u></a> | Discussant:<br>Joseph<br>Blocher | Room<br>111 |
| Sonja West                   | <a href="#"><u>"Press Exceptionalism"</u></a>  | Discussant:<br>Lyrissa<br>Lidsky | Room<br>112 |

*11:00 am - 12:15 pm — Second Breakout Session*

|                   |  |                                    |             |
|-------------------|--|------------------------------------|-------------|
| Derek<br>Bambauer | <a href="#"><u>"Shut Up: Theories of Censorship"</u></a>                                       | Discussant:<br>Molly Land          | Room<br>111 |
| Deven Desai       | <a href="#"><u>"Speech, Citizenry, and the Market: A Corporate Public Figure Doctrine"</u></a> | Discussant:<br>Ashutosh<br>Bhagwat | Room<br>112 |
| Leslie Kendrick   | <a href="#"><u>"Free Speech and Guilty Minds"</u></a>  | Discussant:<br>Adam<br>Kolber      | Room<br>121 |

|             |                                  |                                 |             |
|-------------|----------------------------------|---------------------------------|-------------|
| Andrew Tutt | <a href="#">“The New Speech”</a> | Discussant:<br>Josh<br>Blackman | Room<br>110 |
|-------------|----------------------------------|---------------------------------|-------------|

*12:15 pm - 1:15 pm — Lunch*

*1:15 pm - 3:00 pm — Third Session (Plenary Panel)*

|                      |   |                                   |             |
|----------------------|---|-----------------------------------|-------------|
| Jane Bambauer        | <a href="#">“Is Data Speech?”</a>                                 | Discussant:<br>Rebecca<br>Tushnet | Room<br>129 |
| James<br>Grimmelmann | <a href="#">“Speech Engines”</a>                                  |                                   |             |
| Frank Pasquale       | <a href="#">“Platforms, Power, and<br/>Freedom of Expression”</a> |                                   |             |

*3:30 pm - 4:45 pm — Fourth Breakout Session*

|                    |   |                                     |             |
|--------------------|---|-------------------------------------|-------------|
| Stephen<br>Feldman | <a href="#">“Free Speech, Democracy,<br/>and Political Conservatism:<br/>Two Ironies of Conservative<br/>Free-Speech Jurisprudence”</a> | Discussant:<br><br>Vincent<br>Blasi | Room<br>121 |
|--------------------|---|-------------------------------------|-------------|

|                      |  |                                |          |
|----------------------|--|--------------------------------|----------|
| David Goldberg       | <a href="#"><u>“Droning on About the First Amendment...”</u></a>   | Discussant:<br>Margot Kaminski | Room 111 |
| Neil Richards        | <a href="#"><u>“The Dangers of Surveillance”</u></a>   | Discussant:<br>Frank Pasquale  | Room 110 |
| Ioanna Tourkochoriti | <a href="#"><u>“Should Hate Speech Be Protected? Group Defamation, Party Bans, Holocaust Denial and the Divide Between (France) Europe-U.S.A.”</u></a> | Discussant:<br>Helen Norton    | Room 112 |

*5:15 pm - 6:30 pm — Fifth Breakout Session*

|                    |   |                               |          |
|--------------------|---|-------------------------------|----------|
| Tabatha Abu El-Haj | <a href="#"><u>“Friend Me: Linking the Freedom of Association to the Social Sciences”</u></a> | Discussant:<br>Neil Richards  | Room 111 |
| Felix Wu           | <a href="#"><u>“The Ontology of Speech”</u></a>   | Discussant:<br>Kevin Bankston | Room 110 |

|                 |  |                               |          |
|-----------------|--|-------------------------------|----------|
| Adam Kolber     | “Card Counting and Freedom of Thought”<br><a href="#">[revised version]</a><br><a href="#">[initial version]</a> | Discussant:<br>Seana Shiffrin | Room 112 |
| Zephyr Teachout | “ <a href="#">The First Amendment, Lobbying, and American Political Theory</a> ”                                 | Discussant:<br>Robert Post    | Room 121 |

### **Sunday, May 5, 2013**

*8:30 am - 9:00 am — Breakfast*

*9:00 am - 10:15 am — Sixth Breakout Session*

|                  |   |                                 |          |
|------------------|---|---------------------------------|----------|
| Mark Bartholomew | “ <a href="#">Intellectual Property’s Lessons for Information Privacy Law</a> ” | Discussant:<br>Deven Desai      | Room 112 |
| Tamara Piety     | “ <a href="#">Paternalism and the Regulation of Commercial Speech</a> ”         | Discussant:<br>Andrea Matwyshyn | Room 110 |
| Seana Shiffrin   | “ <a href="#">Lying and the Law</a> ”   | Discussant:<br>Jack Balkin      | Room 121 |

*10:45 am - 12:30 pm — Seventh Session (“Birds of a Feather”)*

|                      |   |                               |             |
|----------------------|---|-------------------------------|-------------|
| Joseph Blocher       | <a href="#"><u>“Nonsense and the Freedom of Speech: What Meaning Means for the First Amendment”</u></a>   | Discussant:<br>Amy Adler      | Room<br>110 |
| Alan Chen            | <a href="#"><u>“Instrumental Music and the First Amendment”</u></a>                                       |                               |             |
| Kiel Brennan-Marquez | <a href="#"><u>“Reynolds v. FDA and the Right Not to Speak”</u></a>                                       | Discussant:<br>Amy Kapczynski | Room<br>112 |
| Caroline Mala Corbin | <a href="#"><u>“Compelled Disclosures”</u></a>  |                               |             |
| Anjali Dalal         | <a href="#"><u>“Administrative Constitutionalism and the Re-Entrenchment of Surveillance Culture”</u></a> | Discussant:<br>David Pozen    | Room<br>121 |
| Mary-Rose Papandrea  | “National Security Leakers and the First Amendment”<br><a href="#"><u>[revised version]</u></a>           |                               |             |

|                 |   |                                    |             |
|-----------------|---|------------------------------------|-------------|
|                 | <a href="#">[initial version]</a>   |                                    |             |
| Thomas Healy    | <a href="#">“The Justice Who Changed His Mind: Oliver Wendell Holmes and the Birth of Free Speech in America”</a> | Discussant:<br>Alexander<br>Tsesis | Room<br>111 |
| Thomas Hochmann | <a href="#">“The Marc Antony Problem”</a>   |                                    |             |

*12:30 pm - 1:30 pm — Lunch*

*1:30 pm - 2:45 pm — Eighth Breakout Session*

|                  |  |                                       |             |
|------------------|--|---------------------------------------|-------------|
| David Ardia      | <a href="#">“Freedom of Speech, Defamation, and Injunctions”</a>               | Discussant:<br>Bruce<br>Brown         | Room<br>109 |
| Andrea Matwyshyn | <a href="#">“Hacking Speech: Informational Speech and the First Amendment”</a> | Discussant:<br>Felix Wu               | Room<br>111 |
| Aaron Saiger     | <a href="#">“Virtual Schools, Virtual Speech, Virtual Communities”</a>         | Discussant:<br>Mary-Rose<br>Papandrea | Room<br>110 |



|             |  |                                   |             |
|-------------|--|-----------------------------------|-------------|
| Adam Shinar | <a href="#"><u>“Public Employee Speech and the Privatization of the First Amendment”</u></a> | Discussant:<br>Heidi<br>Kitrosser | Room<br>112 |
|-------------|--|-----------------------------------|-------------|

# **ACTIVITIES AND SPECIAL EVENTS**

# ACCESS TO KNOWLEDGE

## A2K

December 17, 2012

A gathering of the Access to Knowledge (A2K) Global Academy was convened by the Information Society Project (Yale) on December 17, 2012 in Rio De Janeiro, Brazil. Margot Kaminski (Executive Director), Anjali Dalal (Resident Fellow) and Christina Mulligan (Resident Fellow) attended, along with visiting fellow Carlos Affonso de Souza. The A2K Global Academy is a network of academic centers dedicated to research, education, and policy analysis promoting access to knowledge.

Taking part in the workshop will be representatives from member institutions in Brazil, China, Egypt, Ethiopia, India, South Africa, and the U.S.

June 15-19, 2013

ISP representatives (Margot Kaminski, BJ Ard, Natasha Mendez) attended the Third Annual workshop of Access to Knowledge for Development (A2K4D) at the American University in Cairo (AUC), Cairo, Egypt.

# Knight Law & Media Speaker Series

## Speakers:

### March 14

Mark Glaser, freelance writer

*“Lessons from an Accidental Media Entrepreneur”*

### March 25

Victoria Buckley, career foreign service officer

*“Speaking Truth about Power: Foreign Policy Messaging in the Age of Twitter”*

## Conference:

### November 29, 2012

*Protecting Journalism Conference*

# INFORMATION SOCIETY PROJECT

## THOMSON REUTERS 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 2012

September 13

**Stuart Green**, *What Should Count as Property in Theft Law?: The Problem of Illegal Downloading*

September 25

**Leila Janah**, [\*Samasource: Beyond the Headlines\*](#)

October 18

**A. Michael Froomkin**, [\*Lessons Learned Too Well: International Efforts to Regulate the Internet\*](#)

October 25

**David Karpf**, [\*MoveON Effect: The Unexpected Transformation of American Political Advocacy\*](#)

November 8

**Julie Cohen**, [\*Configuring the Networked Self\*](#)

November 12

**Peter Swire**, [\*EU Data Protection\*](#)

December 6

**Daniel Kreiss**, *Taking Our Country Back: The Crafting of Networked Politics from Howard Dean to Barack Obama*

## Spring 2013 Speaker Series

February 7

**Zachary D. Kaufman**'09; *Social Entrepreneurship in the Age of Atrocities*

February 14

**Cindy Cohen**, [\*Aaron Swartz and Reform of the Computer Fraud and Abuse Act\*](#)

February 21

**Eric Goldman**, [\*The Unexpected Benefit of Internet Immunity\*](#)

February 25

**Rebecca Tushnet**, [\*Performance Anxiety: Copyright Embodied and Disembodied\*](#)

February 28

**Owen Jones**, *Of Bits and Brains: Neurolaw, Brain Imaging, and Brain Activity During Punishment Decisions*

March 1

**David Pozen**, *The Law of Leakiness: Why the Government Criminalizes, and Condones, Unauthorized Disclosures*

March 4

**Mark Fischer**, *Open Source as Social Networking: Community and Contract in Intellectual Property Law*

March 7

**Shubha Ghosh**, [\*Identity and Invention: Patenting Personalized Medicine through Mining Genetic Information\*](#)

March 28

**Ryan Calo**, [\*Taking Data Seriously: Market Manipulation in the Digital Age\*](#)

April 1

**Madhavi Sunder**, [\*From Goods to a Good Life: Intellectual Property and Global Justice\*](#)

April 4

**Guy Pessach**, *Copyright and Media Policy – Configuring the Unforeseen*

April 11

**Brett Frischman**, [\*Infrastructure: The Social Value of Shared Resources\*](#)

# 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 (2012-2013), informal guest speakers led animated discourses on a wide range of subjects, including:

**Cilla Smith, David Thaw, and Albert Wong**, ISP Fellows, discussion on the recent Sixth Circuit cell site decision in *US v. Skinner*, in the wake of *US v. Jones*

**Joe Rosenbaum**, partner at Reed Smith LLP Discussion, discussion on technology and ethics in the context of legal and societal norms

**Pranesh Prakash**, Policy Director at the Centre for Internet and Society, a conversation about censorship, notice-and-takedown regimes, and the role of both online intermediaries and the state.

**James Grimmelmann**, ISP Alum, on his work

**Kiel Brennan-Marquez**, Visiting Human Rights Fellow at the Schell Center at Yale Law School, talk on mind-reading devices and the Fifth Amendment privilege against self-incrimination

**David Gray**, Professor of Law at University of Maryland Francis King Carey School of Law, conversation about his and Danielle Citron's forthcoming paper on the Fourth Amendment.

**Christine Jolls**, YLS Professor, conversation about her article on the role of agreement in Fourth Amendment analysis



**Dov Greenbaum**, Assistant Professor (Adj) Molecular Biophysics and Biochemistry, Yale University, an informal talk about "Genomic Privacy in the Era of Social Media."

**Gabriel J. Michael**, graduate student in the political science department of GW University, talk on "Bounded Rationality in Intellectual Property Policymaking."

**Guy Pessach**, Visiting ISP Fellow, talk on "Disintermediation in Copyright Law"

**Jonathan Ng**, the Global Legal Director of Ashoka

**Linda Greenhouse**, Knight Distinguished Journalist in Residence and Joseph Goldstein Lecturer in Law at Yale Law, talk on the First Amendment as a tool of deregulation.

**Katharine Kendrick**, a foreign affairs officer in the State Department, discussing the Freedom Online Coalition.

**David Robinson**, an alumnus and a visiting fellow at the ISP, a tech policy consultant in Washington DC., discussing his current paper on anti-botnet cases.

**Jonathan Band**, discussion of the Google Book settlement/litigation

**Lisa Larrimore Ouellette**, Resident Fellow, discussing her paper, [\*The Google Shortcut to Trademark Law.\*](#)

**Owen Fiss**, YLS Professor, discussing his new paper, "Even in a Time of Terror."

**Robin Feldman**, Professor of Law at UC Hastings, and Director of the Law and Bioscience Project, discussing her work-in-progress, "Intellectual Property Wrongs."

**Ian Condry**, Associate Professor of Comparative Media Studies at MIT. The title of Condry's talk was "Media Platforms and Collaborative Creativity: Anime, Miku, and the Future of Media."

**Jeremy Kessler**, a J.D./Ph.D. candidate at the Yale Law School and Yale Department of History, discussing his paper, on the history of Catholic legal activism around questions of conscience, privacy, and equality.

**John Delaney** of Morrison & Foerster discussing on social media law

**George Davis**, a managing data scientist at Knewton. Knewton is an NYC-based digital education startup whose adaptive learning platform currently delivers customized coursework to more than 200 thousand students worldwide

**Bill Watson**, a trade policy analyst at the Cato Institute's Herbert A Stiefel Center for Trade Policy Studies, discussing the role of the International Trade Commission (ITC) in patent law.

**Dustin Lewis** of the Berkman Center on H2O as an online platform for textbook development and distribution, and some of the technological, policy, and community practice-related issues associated with it.

**David Westin**, the former president of ABC News and founding CEO of News Right. David discussed business models for the news industry.

**Melissa Gira Grant** discussed online red light districts.

**Current ISP resident fellows** gave short descriptions of their most recent projects

# ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

## **Speakers:**

October 24

Heidi Kitrosser

“Classified Information Leaks and the First Amendment”

October 29

Stuart Karle

[“Both sides of Hacking”](#)

December 10

Lyrissa Lidsky

[“How Not to Criminalize Cyberbullying”](#)

January 27

Ron Collins

[“Nuanced Absolutism: Floyd Abrams and the First Amendment”](#)

April 18

Joel Reidenberg

[“Privacy in Public”](#)

## **Events:**

May 4-5

Freedom of Expression Scholars Conference

# PROGRAM FOR THE STUDY OF REPRODUCTIVE JUSTICE

## Events:

October 23

Glen Cohen

“Fetal Pain and Personhood Initiatives: the Future of Reproductive Rights in America”



The Media Freedom and Information Access Clinic and Information Society Project  
Present:

# FOIA Boot Camp

Interested In:

Government Transparency?

Researching Administrative Law?

Getting more evidence for a clinic case?

Supporting the role of the press in ensuring a healthy democracy?

Knowing what records the government is holding on you?

Speakers Include:

**Karen Kaiser**

General Counsel for The Associated Press

**Lisa Siegel**

Staff Attorney

CT Freedom of Information Commission (FOIC)

**Monday, Feb. 24, 2014**

**6:00-8:00 pm**

**Room 120**

*Dinner will be provided*

The FOIA Boot Camp offers practical strategies for requesting government records through Freedom of Information laws, with a focus on the federal Freedom of Information Act (FOIA) and Connecticut's Freedom of Information (FOI) law. The program is designed for students, journalists, and interested members of the community. This year's speakers include Karen Keiser, General Counsel of the Associated Press, and Lisa Siegel, Staff Attorney CT Freedom of Information Commission (FOIC)

For those unable to attend, video of the FOIA Boot Camp will be live streamed. Watch it [here](#). The event is hosted by the Media Freedom & Information Access clinic 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

The Yale Visual Law Project produces short documentary films on legal issues to advance public debate.

**Education.** We run [a year-long practicum](#) at the [Information Society Project](#) at [Yale Law School](#) that trains law students in the art of visual advocacy — making effective arguments through film.

**Innovation.** We explore the intersection between law and film through multidisciplinary workshops, discussions with renowned guest speakers, and hands-on production.

**Advocacy.** We produce intellectually stimulating and well-researched [films](#) grounded in the stories of people who live out the consequences of the law.

**Community.** We are part of a rising community of students, lawyers, and filmmakers invested in visual advocacy. Learn more about [our grand experiment](#) and [sign up](#) for news and updates.

In 2012-13, the Visual Law Project (VLP) team built upon its experiences in production, distribution, and advocacy to take on a diverse array of public interest legal issues through high-quality, high-impact investigative films. Among other achievements, this past year, its third, the Project:

- Premiered *The Worst of the Worst*, a thirty-minute documentary on Connecticut's "Supermax" prison, and hosted screenings around the country and abroad;
- Appeared on MSNBC's Melissa Harris-Perry Show to discuss solitary confinement and show a clip from *The Worst of the Worst*;
- Collaborated with Human Rights First to begin production on a documentary on immigration detention; and
- Embarked upon an investigation of the New Haven Police Department's new community-based approach to policing the city

In the Fall of 2012, VLP was excited to complete its documentary investigation of the use of solitary confinement and the rise of “super-maximum security” prisons with the premiere of *The Worst of the Worst: Portrait of a Supermax*. The team accumulated more than 60 hours of footage during production, before working around the clock to edit together the story’s narrative, seeking advice and criticism from advisors and professors throughout. In anticipation of its completion, MSNBC screened excerpts from the film and discussed prison policy and mass incarceration with VLP’s founder Valarie Kaur on *The Melissa Harris-Perry Show*. In December, the culmination of more than a year of work, VLP premiered *The Worst of the Worst* to an audience of more than 200 students, scholars, community members and government officials at the Yale Law School.

The film has been shared at community screenings from New Haven to New Orleans, as a teaching module in classes at colleges including Wesleyan and New York University, and as an advocacy tool in conjunction with agencies like the American Civil Liberties Union. The film was used in YLS Professor James Forman’s keynote address at a symposium held by the University of Michigan’s *Journal of Race & Law*, presented by VLP’s Eric Parrie and Ivy Wang at an international human rights conference at the University of Manitoba, and utilized for a campaign by advocates at King’s College in London. The documentary has been screened for prisoners in New Haven’s Green Haven Prison and for correctional officers and members of the Department of Correction in several states in the Northeast. The Visual Law Project continues (and will continue) to screen *The Worst of the Worst* on a nationwide tour in 2013-2014 that will bring the film in front of legislators, academics, university and graduate students, and advocates.

In addition to completing *The Worst of the Worst*, VLP launched two new documentary projects in 2012-13:

First, VLP was commissioned by the international human rights organization, Human Rights First, to create a documentary feature exploring American policy on and use of immigration detention. Through the film, VLP has sought to understand and explain a system that holds approximately 34,000 people in secured enclosures on any

given day, sometimes indefinitely, with limited judicial oversight. Production for the project has brought VLP members on multiple shoots through Texas, New York, Pennsylvania and California, as the team follows the stories of detained (and formerly) detained individuals and their families, federal officials, government and public interest lawyers, grassroots advocates and national policymakers. Upon the film's anticipated completion in November 2013, Human Rights First will use the documentary in a national policy reform campaign.

Second, VLP has been exploring the complete overhaul of the New Haven Police Department's policing strategy. After the city experienced a twenty-year high in murders in 2011, New Haven hired a new police chief to implement a "community-based" model to increase safety, reduce violence, and build trust between the department and the city's residents. The VLP team has had unprecedented access inside the NHPD and followed the implementation of the new tactics within the department and throughout the city. The project will take the form of a series of shorts, the first of which is nearing completion, to be distributed via major media outlets and news sources.



# 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.

## **10/10/12 at Harvard**

"India's Mobile Phone Revolution: A Legislative History, 1994-present"

Colin Agur, Columbia University and Yale Information Society Project

"Set the fox to watch the geese: voluntary, bottom-up IP regimes in piratical file-sharing communities"

Bodó Balázs, Budapest University of Technology and Economics,  
Fellow @ Harvard University, Berkman Center for Internet and Society

"Data Science for Gender Equality in the News"

J. Nathan Matias, MIT Center for Civic Media (@natematias)

## **12/6/12-12/7/12 at Harvard/MIT**

Mayo Fuster Morell, Berkman Center: —Governance of the Commons.

Bodó Balázs, Berkman Center: —Hush, hush: It's a (pirate) Library.

Benjamin Mako Hill, Berkman Center: —Almost Wikipedia.

Hendrik Send and Sascha Friesike, HIIG: —Motivation in Co-Creation.

Johanna Sprondel and Sascha Friesike, Alexander von Humboldt Institute for Internet & Society (HIIG): —Knowing How and Knowing That Knowing Changes.

Shlomit Yanisky-Ravid, Yale ISP: —Rethinking Innovation.

Ramesh Subramanian, Yale ISP: On Information Systems Security, History of Technology, ICT4D, Technology and Privacy Policy

David Thaw, Yale ISP: On Cybersecurity/Cybersecurity Regulation

Martin Lose, HIIG: Some Thoughts about Online Platforms from a Legal Perspective

Brian Keegan, MIT: —Hot off the Wiki: Structure and Dynamics of Wikipedia's Coverage of Breaking News Events."

Amy Johnson, MIT: —Decrowning Doubles: Character & Context in a Bahraini Twitter Parody Account.

Catherine D'Ignazio, MIT: "Mapping the Globe," looking at how the attention of the Boston Globe is distributed geographically between neighborhoods and cities/towns in Massachusetts

Presentations by Ethan Hardt, Chris Peterson, and Phil Schmidt

Rüdiger Schwarz and Osvaldo Salidas, HIIG: On global constitutionalism

Katherine Brown, Columbia University: On the interplay of technology, U.S. foreign policy and global media, and the dramatic growth of media in Afghanistan and Pakistan since 2002

Christian Katzenbach and Kirsten Gollatz, HIIG: On Internet Policy and Governance and Insights from Research Projects

Robert Faris, Berkman Center: On the Controversy Mapping Project

Maria Löblich, Berkman Center: —Civil advocacy Groups in the Field of US Net Neutrality Contentions. A Research Plan."

# **CLINICAL ACTIVITIES**

# Media Freedom and Information Access Clinic

---

Yale Law School has long focused on the intersection of law, media and journalism. The Media Freedom and Information Access Clinic 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. The MFIA Clinic is housed in the Abrams Institute for Freedom of Expression.

## 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:

June 11, 2013

**Media Freedom and Information Access Clinic, ACLU Ask Spy Court to Release Secret Opinions on Patriot Act Surveillance Powers**

Together with the American Civil Liberties Union (ACLU), [Yale Law School's Media Freedom and Information Access Clinic](#) filed a motion Monday with the secret court charged with overseeing government surveillance in national security cases, requesting opinions that may shed light on the scope, meaning, and constitutionality of Section 215 of the Patriot Act.

The filing comes one week after media accounts published a Foreign Intelligence Surveillance Court (FISC) order requiring Verizon to turn over months' worth of phone call data. The secret order used Section 215 of the Patriot Act as the legal justification for the action, which has been the source of intense scrutiny and public debate in recent days.

Max Mishkin '14, a member of the clinic, said the ACLU reached out to the clinic over the weekend and they moved quickly to join the case. The motion offers two separate grounds for releasing the secrete rulings: the public's constitutional right of access to judicial decisions under the First Amendment, and the FISC's independent authority to publish these rulings as it sees fit.

"In light of the recent news, it is crucial for the FISC to reveal how it has interpreted the scope of Section 215, so that the public can take part in a meaningful debate over balancing privacy and security," said Mishkin.

"Releasing certain key FISC opinions will help inform a necessary public conversation about surveillance, privacy, and the scope of the Patriot Act—a discussion that has been much inhibited by the government's secret management of this program."

[David Schulz](#) '78, director of the Media Freedom and Information Access Clinic and a visiting lecturer at Yale Law School, said the lawsuit is about reclaiming a core level of transparency that is critical to protecting “the thin line that separates democracy from tyranny.”

“New types and levels of surveillance may be inevitable in these times,” said Schulz. “But a democracy cannot function if the basic rules and procedures that govern the surveillance and prevent abuse are not disclosed. A secret court that issues secret orders deciding secret motions based on secret legal principles threatens the fundamental principles on which this nation was built.”

The Media Freedom and Information Access Clinic at Yale Law School works to support a robust investigative role for news organizations and to preserve the public’s right of access of information, thereby ensuring a well-informed public sphere.

For more information on the case, visit the [ACLU website](#).

February 8, 2012

### **Emily Bazelon '00 and Media Freedom and Information Access Clinic Win Access to Settlement Agreement in Phoebe Prince Case**

In a victory for both Yale Law fellow and lecturer [Emily Bazelon '00](#) and Yale Law School clinic students, a Massachusetts Superior Court recently ordered disclosure of a settlement agreement between the town of South Hadley, Mass., and the family of Phoebe Prince, a teenager whose 2010 suicide after being bullied at school attracted national news attention. Yale Law School’s [Media Freedom and Information Access Clinic](#) (MFIA), under the supervision of the Massachusetts ACLU, represented Bazelon in the public records litigation over the settlement document.

The settlement stems from a complaint filed by Phoebe Prince’s family with the Massachusetts Commission Against Discrimination (MCAD), which alleged that South Hadley Public Schools had failed to protect Phoebe from discrimination amounting to sexual harassment. The

Town of South Hadley settled the suit for \$225,000 in exchange for full release of all claims, according to the documents released to Bazelon in December 2011.

Bazelon, who is the Truman Capote Fellow for Creative Writing and Law and Lecturer in Law at Yale Law School as well as a senior editor for Slate, requested a copy of the settlement agreement under the Massachusetts Public Records Law in May 2011. Edward J. Ryan, Jr., Town Counsel for South Hadley, denied her request, citing a confidentiality clause and claiming that the settlement was not subject to disclosure because it was paid by the town's insurer and did not come from public funds.

With Bill Newman of the Massachusetts ACLU, MFIA argued that Ryan should not have denied the request because the settlement agreement satisfied the definition of a public record under Massachusetts law, and it did not fall under any of the enumerated exemptions in the Public Records Law.

Judge Mary-Lou Rup of the Hampshire Superior Court agreed, granting Bazelon's motion for a preliminary injunction requesting immediate disclosure of the agreement. "Bazelon has demonstrated that she (in her role as a news reporter) and the public have a First Amendment right to access the information contained in these settlement documents," the judge wrote. "Bazelon has shown that continued lack of access [to] these documents will result in irreparable harm to her and the public that outweighs any harm to the defendants."

"I hope this sets a precedent, by signaling to towns that they can't subvert open records acts by outsourcing settlements to insurance companies and agreeing to suspect non-disclosure clauses," Bazelon said. "The public has a right to know how South Hadley handled this allegation of wrongdoing, and I'm very grateful to MFIA and the ACLU of Massachusetts for helping me bring this information to light."

MFIA clinic students Isia Jasiewicz '13, David Lamb '13, and Alyssa Work '13 worked on the case. [MFIA](#), an initiative of the Information



Society Project and the Knight Law & Media Program at Yale Law School, was founded by Yale Law School students to defend the public's right of access to government information and to support traditional and emerging forms of newsgathering. Through MFIA, Yale Law students work under the supervision of veteran media attorneys who volunteer their time pro bono on cases where private actors lack the resources to prosecute the public's access rights.

# **COURSES**

# INFORMATION SOCIETY PROJECT COURSES AND READING GROUPS

---

## Related Courses

Fall 2012, Spring 2013 **Access to Knowledge Practicum**  
Jack Balkin, Margot Kaminski, and Christina Mulligan

Fall 2012 **Media Law**  
Spring 2013 **Internet Privacy**  
Adam Cohen

Fall 2012, Spring 2013  
**Media Freedom and Information Access Clinic**  
Adam Cohen and David Schulz

Fall 2012 **Supreme Court Advocacy**  
Fall 2012, Spring 2013 **Advanced Supreme Court Advocacy**  
Spring 2013 **Institutional Supreme Court**  
Linda Greenhouse

## Reading Groups

Fall 2012 Reproductive Justice Reading Group

Spring 2013 Robots Reading Group