

YALE LAW SCHOOL



# INFORMATION SOCIETY PROJECT

Accomplishments

2013-2014

# 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

## 2013 - 2014 Directors, Staff and Fellows

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### 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

- BJ Ard
- Valerie Belair-Gagnon
- Kiel Brennan-Marquez
- Camilla Hrdy
- Kara Loewentheil
- Jonathan Manes
- Pranesh Prakash
- Esteve Sanz
- Priscilla Smith

## Visiting Fellows

- Colin Agur
- Logan Beirne
- Irin Carmon
- Betsy Cooper
- Anjali Dalal
- Kate Darling
- Shay David
- Kate Fink
- Kristelia Garcia
- Brad Greenberg
- Zachary Kaufman
- Derek Khanna
- William New
- Lisa Larrimore Ouellette
- Guy Pessach
- Ri Pierce-Grove
- David Robinson
- Genevieve Scott
- David Segal
- Chris Soghoian
- Ramesh Subramanian
- Nabiha Syed
- Xiyin Tang
- David Thaw
- Andrew Tutt
- Christopher Wong
- Shlomit Yanisky-Ravid

## Knight Law and Media Scholars

Andrew Burt, 2014	Max Mishkin, 2014
Valerie Belair-Gagnon	Anjali Motgi, 2014
Conor Clarke, 2015	Erica Newland, 2014
Laura della Vedova, 2014	Nathana O'Brien, 2016
Vera Eidelman, 2015	Dayo Olopade, 2014
Carlton Forbes, 2014	Robert Quigley, 2014
Matthew Halgren, 2015	EsteveSanz
Patrick Hayden, 2014	Wanling Su, 2014
Jordan Hirsch, 2016	Nafees Syed, 2014
Miriam Hinman, 2015	Laura Torre Gomez, 2014
Margot Kaminski	Jacob Victor, 2014
Sam Kleiner, 2015	Alyssa Work, 2013
Christina Konigisor, 2014	Josh Weinger, 2014
John Langford, 2014	Daniel Weisfield, 2014
Ryan McCartney, 2014	Rebecca Wexler, 2016
Iya Megre, 2014	

## **ISP Student Fellows**

- Andrew Burt, 2014
- Laura della Vedova, 2014
- Vera Eidelman, 2015
- Matthew Halgren, 2015
- Miriam Hinman, 2015
- Pat Hayden, 2014
- Sam Kleiner, 2015
- John Langford, 2014
- Ryan McCartney, 2014
- Max Mishkin, 2014
- Iya Megre, 2014
- Erica Newland, 2014
- Nathana O'Brien, 2015
- Dayo Olopade, 2014
- Robert Quigley, 2014
- Wanling Su, 2014
- Nafees Syed, 2014
- Rebecca Wexler, 2016
- Josh Weinger, 2014
- Albert Wong, 2015

## **Undergraduate Student Fellows**

- Bobby Dresser, YC 2014
- Ariel Ekblaw, YC 2014
- Raphael Leung, YC 2014
- Aseem Mehta, YC 2014
- Joel Sircus, YC 2014

## **Yale University Affiliates**

- Jason Eiseman
- Joan Feigenbaum
- Michael Fischer
- Vali Gazula
- Susan Gibbons
- Bonnie Kaplan
- Sean O'Brien
- Limor Peer
- Thomas Pogge
- Brad Rosen
- Christina Spiesel
- Tina Weiner

# **SCHOLARSHIP AND ACADEMIC PRESENTATIONS**

# Highlights of Fellow Activities

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## BJ Ard – Thomson Reuters Resident Fellow

### Publications

- *Confidentiality and the Problem of Third Parties: Protecting Reader Privacy in the Age of Intermediaries*, 16 YALE J.L. & TECH. 1 (2013).
- *The Final Word: Civil Law Developments in the State Supreme Court*, DAILY JOURNAL (L.A.) (with Joseph M. Lipner) (ongoing column, most recently published July 2013 and March 2014).

### Conferences

- Second Freedom of Expression Scholars Conference. Yale Law School, May 2014. Discussant for Neil Richards' *Why Data Privacy Law Is (Mostly) Constitutional*.
- IP Scholars Roundtable. Drake Law School, March 2014. Presented *Copyright License Enforcement Through the Contract Lens*.
- Works-In-Progress in Intellectual Property. Santa Clara Law School, Feb. 2014. Presented *Copyright License Enforcement Through the Contract Lens*.
- Cyberscholar Working Group. Yale Law School, Jan. 2014. Presented *Copyright License Enforcement Through the Contract Lens*.
- Third Global Congress on IP and the Public Interest. University of Cape Town, Dec. 2013. Facilitator for workshop on Technological Protection Measures and International IP Treaty Obligations (with Pranesh Prakash)
- Drones & Aerial Robotics Conference. NYU Law School, Oct. 2013. Speaker on Innovation Law & Policy Roundtable.

## Other activities

- Co-facilitated "Legal Scholarship in the Information Society" reading group (with Kiel Brennan-Marquez).
- Co-authored amicus brief on behalf of the Floyd Abrams Institute for Freedom of Expression and First Amendment Scholars in the *In re National Security Letters* case pending before the Ninth Circuit Court of Appeals (with Jonathan Manes and other fellows and affiliates) (available at <http://cdn.ca9.uscourts.gov/datastore/general/2014/05/23/13-15957,13-16731Floyd.pdf>).

## Valerie Belair-Gagnon – Resident Fellow, Knight Law & Media Program Director

### Articles

- 2014. Reconstructing the Indian public sphere: Newsworld and social media during the Delhi gang rape case, *Journalism: Theory, Practice and Criticism*. (with Smeeta Mishra and Colin Agur)
- 2013. Revisiting impartiality: Social media and journalism at the BBC, *Symbolic Interaction*, 36(4): 478-492.

### Reviews

- 2014. On the challenges of qualitative inquiries in an interconnected world, Norman K. Denzin [book review], *Symbolic Interaction*.
- 2013. Cross-media ownership and democratic practice in Canada: Content-sharing and the impact of new media, Walter Soderlund et al. [book review], *Journalism: Theory, Practice and Criticism*, 14(6): 842-843.

### Media

- 2014. Security, Internet rights and principles: Power shifts and implications for Internet policy-making in India, *Internet*

Policy Observatory, Center for Global Communication Studies, Annenberg School of Communication, University of Pennsylvania. (with Ramesh Subramarian and Colin Agur)

- 2013. Pro-surveillance media bias, or the return of “either you are with us, or you are with the terrorists”, Columbia Journalism Review. (with Albert Wong)
- 2013. On the NSA and media bias: An extended analysis, Concurring Opinions. (with Albert Wong)

### **Conference/Talks**

- 2014. Media systems and media markets: Effects on journalism, Journalism Studies Division, International Communication Association annual conference, Seattle, WA (Session chair)
- 2014. Television as social fact, International Communication Association annual conference, Seattle, WA (with Esteve Sanz)
- 2014. Internet governance: Interplay between national and global Internet policies, IAMCR, Hyderabad, India. (with Ramesh Subramarian and Colin Agur)
- 2014. Social media and changing norms in Indian journalism: The case of the 2014 Indian elections, Social media and the transformation of public space, University of Amsterdam, Netherlands. (with Colin Agur)
- 2013. Reconstructing impartiality at the BBC: Social media, agents and agenda-setting, Symbolic Interaction and Media, National Communication Association Convention, Washington, DC.
- 2013. Revisiting the chilling effect in freedom of the press and libel law, Freedom of Speech, World Social Science

Forum, Social Transformations and the Digital Age, Montreal, Canada.

- 2013. Producing news outside traditional newsroom: The impact of social media on BBC journalism, Media & Democracy, World Social Science Forum, Social Transformations and the Digital Age, Montreal, Canada.
- 2013. Interaction and training: Social media in news organizations, International Communication Association annual conference, London.
- 2014. Access to Knowledge Global Academy (A2KGA) - Collaborative Research on A2K. Open for Change, The American University in Cairo, School of Business, Access to Knowledge for Development, Cairo.

### **Other Activities**

- Facilitated “Media Law and Policy” reading group
- Research grant from Internet Policy Observatory, Annenberg School of Communications, University of Pennsylvania
- Reviewer: ICA Journalism Division, New Media and Society Journal
- Assistant to the editor, Global Media Journal- Canadian Edition

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## **Kiel Brennan-Marquez – Resident Fellow**

### **Publications**

- Bannan Marquez, K. 2014, *The Philosophy and Jurisprudence of John Roberts*, Utah Law Review
- Khan, P. and Bannan Marquez, K. 2014. *Statutes and Democratic Self-Authorship*, William and Mary Law Review.
- Bannan Marquez, K. 2013. *The Epistemology of Iqbal and*

*Twombly and The Faces of Judicial Naivete*, Regent  
University Law Review and Constitutional Commentary.

## Media

- [Interview-with-Orly-Lobel](#)
- [Hobby-Lobby-Supreme Court class](#)
- [Is a Corporation Like a Church](#)
- [Let's Not Celebrate the General Mills Decision Yet](#)
- [A New Kind of Free Speech Drug Reps Pitch to Doctors](#)

## Conferences

- Moderated a panel on human capital at the "Innovation Law Beyond IP" conference in at Yale Law School, April 2014
  - Presented a paper "*The Freedom Not to Think*" at the Freedom of Expression Scholars Conference in May 5, 2014 at Yale Law School.
  - Presented a paper "*Strangers, Intimates, and Fiduciaries: Rethinking the Third-Party Doctrine*" at the Privacy Law Scholars Conference in June 5, 2014 at Berkeley Law School.
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## Camilla Hrdy – Resident Fellow

### Publications

- *State Patent Laws in the Age of Laissez-Faire*, 28 Berkeley Tech. L.J. (2013)
- *Dissenting State Patent Regimes*, 3 IP Theory 78 (2013)
- *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/](http://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/>
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**Margot Kaminski – Executive Director**

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

#### **Articles**

- 2014. “Abortion,” in ENCYCLOPEDIA OF HUMAN SEXUALITY (eds. Patricia Whelehan and Anne Bolin) (Wiley Blackwell).
- 2014. When Free Exercise Is A Burden: Protecting “Third Parties” in Religious Accommodation Law, forthcoming in DRAKE L. REV.

#### **Media**

- 2014. Religious Accommodations Cost More Than Money, Balkinization, (March 26), available at <http://balkin.blogspot.com/2014/03/religious-accommodations-cost-more-than.html>.

#### **Conferences**

- 2014. “Bodies in Change: Analyzing the Corporeal Logics of Law and Social Change Locally and Globally,” at Law & Society Association Annual Meeting: Law & Inequalities, Minneapolis, MN (panel chair and commentator).

- 2014. “When Free Exercise Is A Burden,” at Law & Society Association Annual Meeting: Law & Inequalities, Minneapolis, MN (paper presentation, panel chair).
- 2014. Contraception at the Supreme Court,” at Boston University, Boston MA.
- 2014. “One Of These Things Is Not Like the Others: What Obesity Discrimination Can Teach Us About Civil Rights Law,” at Legal Scholarship 4.0: Looking Towards the Future, Northeastern Law School, Boston MA (paper selected for presentation and workshop).
- 2014. “When Free Exercise Is A Burden,” at The Seventh Annual Feminist Legal Theory Conference, University of Baltimore School of Law, Baltimore MD (paper presentation).
- 2013. Abortion & Assisted Reproduction Workshop (participant), Yale Law School.
- Co-Convenor, “What’s Wrong With ‘Consent’?,” Yale Law School 2013-14 (invite-only interdisciplinary discussion series for law, humanities and social science professors and yale administrators around sexual politics and the concept of “consent”).
- 2013. “Thinking Critically About Sex and Reproduction,” at Movements for Sexual and Reproductive Health and Rights: Critical Reflections (panel moderator), Northeastern Law School.

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**Pranesh Prakash –**

**Esteve Sanz – Thomson Reuters Resident Fellow**

## **Articles**

- 2014. Sanz, E. and Stancik, J. Your Search “Ontological Security” Reported 110.000 Results. *New Media and Society*. 16(4) 252-270
- 2013. On the Symbolic Production of Digital Markets for Cultural Goods. *Journal of Cultural Economy*. 7(2) 131-144

## **Book chapters**

- 2014. Open Governments and Their Cultural Transitions. in Gasco, M. (ed.) *Open Government*. Springer.
- 2014. Depratto, G., Sanz, E. & Simon, JP. (eds.). *Digital Media Worlds*. Palgrave (Sanz: Author of one chapter).

## **Conferences**

- EuroCPR 2014: Paper: Of War and Peace: An European Technological Tale. Brussels, March 24-25, 2014.
- International Communication Association Conference: Paper (with Valerie Belair-Gagnon): Is digital TV fragmenting civil membership? Seattle, May 22-26 2014.
- FESC II. Yale Law School. Paper: The First Amendment and Cultural Creation. May 3-4, 2014.
- International Conference in Algorithmic Cultures: Five Algorithmic Cultures and their Ontologies: A Performative Critique. Konstanz, Germany. June 23, 24 and 25, 2014.

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

- PSRJ hosted and co-sponsored conferences, roundtables, panels, speakers and reading groups that increase cross-fertilization between the academic and advocacy communities and among subject areas. Highlights of the

events that we have sponsored or are co-sponsoring this academic year, which the Nolen-Bradley grant helped support, include:

### **Program Activities and Events**

#### **Religious Freedom and Equality: An International Look:**

PSRJ co-sponsored a conference with the ACLU at Brooklyn Law School entitled “Religious Freedom and Equality: An International Look.”

A distinguished group of advocates and academics gathered from across the globe to discuss the relationship between religious and secular authority. Much of the discussion focused on the question of whether religious exemptions or “accommodations” should be granted to those who claim that a generally applicable law enacted to accomplish an important secular purpose either prevents them from acting in a manner required by their religious beliefs, or requires them to act in a way that conflicts with their beliefs. We shared information about how national and international legal systems are wrestling with these tensions between religious and secular authority, and some of the ways in which different legal systems have addressed these issues. Cilla Smith gave the closing address at the conference and is publishing an article based on those comments in the Brooklyn Journal of Law and Policy.

#### **Intersections in Reproduction: Perspectives on Abortion, Assisted Reproductive Technologies, and Judicial Review:**

Abortion and reproductive technologies have historically occupied separate realms in law, policy, and academia. In spite of some natural overlap, scholarship exploring the relationship between abortion and assisted reproduction is sparse. On April 17-18, 2014, PSRJ, working in conjunction with the Petrie-Flom Center at Harvard Law School, will host a workshop to discuss papers that have been preliminarily selected for publication in a special issue of the Journal of Law, Medicine and Ethics, co-edited by Judith Daar (Whittier Law School) and Kimberly Mutcherson (Rutgers Law-Camden). The [Journal of Law, Medicine & Ethics](#) is a peer-

reviewed journal published by the American Society of Law, Medicine & Ethics.

### **From Delhi to Steubenville: Media Coverage of Rape**

PSRJ co-sponsored a panel discussion with the Knight Law and Media Program to discuss media coverage of rape and its impact on law reform in India and the United States. The panel brought together moderator, Inderpal Grewal, Chair of Women's, Gender, and Sexuality Studies, Yale University; Radha S. Hegde, Associate Professor of Media, Culture and Communication, New York University; Rupal Oza, Director, The Women and Gender Studies Program, Hunter College, CUNY; Daniel Senior Research Fellow, Robarts Centre for Canadian Studies, and Professor Emeritus of Political Science, York University; and Colin Agur, PhD candidate at Columbia University and Visiting Fellow at the Information Society Project at Yale Law School.

**Speaker Series:** PSRJ invited a series of speakers to the Law School to discuss such topics as the use and treatment of expert evidence in abortion cases; how politics influences women's access to contraceptives because of the Right's use of religious objections, particularly the ways in which the Patent and Trademark Office has been influenced by Right leaning politicians when considering patents for controversial inventions, including abortion methods; and the history of the Religious Right's movement to deny access to LGBT people to public accommodations based on religious claims.

**Roundtable:** Cilla Smith consulted with Professor Suzanne Goldberg of Columbia Law School in planning a gathering of gay rights and reproductive rights advocates and academics to share knowledge and strategies. The gathering was sponsored by and held at CLS's Center for Gender and Sexuality. Cilla has been invited to submit a paper on movement strategies to the Columbia Journal of Gender and Law. We are planning on continuing this partnership and co-sponsoring a follow-up event.

### **Research and Amicus Projects:**

Over the course of the past year, PSRJ focused its research and writing efforts on two areas: the litigation-seeking exemptions from the Affordable Care Act's requirements that insurance plans cover contraception; and the development of legal standards applicable to abortion restrictions.

- In support of our first focus area, Cilla Smith wrote a paper entitled *Who Decides Conscience: RFRA's Catch 22*, which will be published this spring in the *Brooklyn Journal of Law and Policy*, (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2402061](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2402061)).

She also wrote a blog post on the impact of the Religious Freedom Restoration Act for Jack Balkin's Constitutional Law blog, *Balkinization*.

Also in support of this first focus area, our postdoctoral fellow, Kara Loewentheil, researched and wrote an important paper, *When Free Exercise Is a Burden: Protecting "Third Parties" in Religious Accommodation Law*.<sup>[1]</sup> In her paper, she argues that the current doctrine applicable to religious accommodation claims- both under the First Amendment and the Religious Freedom Restoration Act - is ill-suited to the contraceptive coverage requirement cases, in which a conflict exists between those who claim their religious exercise is being burdened, and existing third party rights-holders whose interests would be negatively affected by a grant of accommodation to an objector.<sup>[2]</sup> For these cases, she proposes a framework that would "vindicate[e] the purpose of religious accommodation rights [while also] protecting [existing rights holders] from the negative impact of accommodations."<sup>[3]</sup> While Kara argues that "current doctrine can be argued to obliquely support an emphasis on the interests of existing rights holders," she also proposes "a framework that places a positive obligation on the state to respect all the substantial rights involved when possible, and that prioritizes equality-implicating rights when not possible."<sup>[4]</sup>

- In support of our second focus area, Cilla is in the process of writing a paper based on a presentation she gave at

Washington & Lee School of Law. The paper is entitled *If the Purpose Fits: The Two Functions of Casey's Purpose Inquiry* and will be published in the *Washington & Lee Law Review*.

- **Abortion Jurisprudence research:** In support of our second focus area, Cilla is currently working on issues of reproductive rights jurisprudence with Professors Reva Siegel, Linda Greenhouse, and a number of students, all of whom are conducting supervised research projects. She is advising them on research into the divergent ways the courts have applied the legal standard set out in *Planned Parenthood v. Casey*. This research will inform amicus briefs that we are planning to file in the next series of cases on abortion regulation, which will likely be heard by the Supreme Court in the next year or two.

- **NAACP v. Horne:** Working with a first-year law student, Cilla filed an amicus brief in the Ninth Circuit appeal of the ACLU's challenge to Arizona's ban on race and sex selection abortions. These laws are the entry point in a campaign by anti-abortion activists to subject women's reasons for getting abortions to legal scrutiny, to end what they call "abortion on demand." Clothed in the language of anti-discrimination, these laws are enacted based on unfounded assertions that black women have a higher rate of abortion because they are "de-selecting" their race, and that Asian women in the U.S. have sex-selective abortions.<sup>[5]</sup> The plaintiffs, members of the local NAACP and an Asian women's advocacy group, alleged that the law stigmatizes them and their reasons for obtaining abortions, and subjects their reasons for obtaining abortions—reasons that must be reported to the State—to increased scrutiny based on their race.

The trial court dismissed the case for lack of standing, holding that claims of harm from the racist justifications for the law were not enough to establish standing in the absence of allegations that the law would actually prevent the plaintiffs from obtaining abortions. Our brief made two points:

- First, we argued that a primary purpose of the Equal Protection Clause is to protect against the stigma caused by discriminatory treatment, often called “stigmatic injury,” and that this injury is cognizable absent denial of a material benefit under both Equal Protection Clause and Establishment Clause jurisprudence.

- Second, we argued that the trial court misinterpreted the Supreme Court’s requirement that plaintiffs “allege a stigmatic injury suffered as a direct result of having been denied equal treatment,” *Allen v. Wright*, 468 U.S. 737, 755 (1984) (emphasis added). Plaintiffs do not have to allege they will be denied abortions under the law. It is enough to allege that the Plaintiffs’ injury is a direct result of having been denied equal treatment because the law subjects their reasons for obtaining abortions to increased scrutiny based on their race.

- *M.C. v. Aaronson*: Cilla also worked with a second-year law student on an amicus brief filed on behalf of PSRJ and additional constitutional scholars appealing the denial of a motion to dismiss in a case brought by a boy who was born intersex. The boy, M.C., alleges that his procreative abilities were destroyed and his bodily integrity denied by South Carolina physicians and the Department of Social Services in an operation on his genitalia designed to make him “female.” Our brief argued that the right to procreation is clearly established, thus supporting the trial court’s denial of a motion to dismiss based on qualified immunity of the state actors.

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[1] 62 Drake Law Review --- (2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2306691](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2306691)

[2] *Id.* at 65.

[3] *Id.*

[4] *Id.*

[5] The Arizona Legislature enacted the law based on two claims: 1) that the higher than average rate of abortions obtained by African-American women indicates that these women are “de-selecting” their race, having abortions out of some kind of racial self-hatred; and 2) that the preference for sons in China and India under vastly different social conditions will lead Asian women who

come to the United States to obtain sex-selective abortions here,  
even though evidence does not bear this out.

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# CONFERENCES





Foreign Affairs  
in the Internet Age

**Monday, February 10, 2014  
Yale Law School**

## **Trade and Transparency in the Internet Age**

10:35 am- 12:00 pm (Room 124)

### **Panel I: How the U.S. Negotiates Free Trade Agreements**

Panelists: Oona Hathaway, Mark Wu, David Levine, Richard Steinberg  
Moderator: Amy Kapczynski

12:10 - 1:30 pm (Room 127 - lunch served)

### **Panel II: The Internet, Free Trade, and Transparency: An International Perspective**

Panelists: Michael Geist, Peter Yu, Ante Wessell  
Moderator: Margot Kaminski

Co-sponsored by:

**Yale Journal of Health Law, Policy and Ethics**

**This event is made possible by sponsorship from the  
Oscar M. Ruebhausen Fund**



**YALE LAW SCHOOL**  
**The Information Society Project**

## **Trade and Transparency in the Internet Age**

Monday, February 10, 2014 - 10:30am

In 2010, the leaked draft text of the Anti-Counterfeiting Trade Agreement (ACTA), a free trade agreement dealing with intellectual property rights and enforcement, was released on Wikileaks. ACTA eventually failed in the EU, amid protests that the negotiating process was undemocratic. In 2013-14, Wikileaks released the leaked IP chapter and environmental chapter of the Trans-Pacific Partnership Agreement (TPP), another free trade agreement. Both leaks led to considerable public debate over both the content of the agreement and the negotiating process.

The leaks of these free trade agreement drafts, and the reactions to them, point to friction between how trade law has customarily been negotiated—in relative secrecy—and the current demands of constituents excluded from the negotiating process. The leaks, and their policy effects, point to a need for a renewed discussion of trade and transparency in the Internet Age.

This issue is pressing, both at home and abroad. Congress is currently considering renewing Fast Track, the way in which trade gets negotiated in the United States, and there is an active domestic debate over whether Fast Track affords adequate accountability and transparency and leads to good policy. Globally, Trans-Pacific Partnership Agreement negotiations are ongoing, but whether the agreement will be successfully concluded is in doubt. Free trade agreement negotiations, the argument goes, trade off democratic accountability for the sake of completing important trade agreements without interference from local protectionists. Now that free trade agreements contain complex regulatory subject matter—including detailed intellectual property provisions that impact Internet law and health policy—should they still be negotiated through comparatively opaque regimes? Is true opacity even possible in the Internet Age? Is there an ideal middle ground, allowing increased Congressional involvement, or for the public release of texts after a period of time?

These two panels looked at these questions from U.S. and international perspectives, considering whether trade lawmaking requires striking a unique balance between efficacy and transparency, and asked what that balance might be.

*A Foreign Affairs in the Internet Age (FAIA) Event, co-sponsored by Universities Allied for Essential Medicine (UAEM) and the Information Society Project (ISP)*

Made possible with support from the Oscar M. Reubhausen Fund

Schedule:

10:35 am- Noon (Room 124)

*Panel I: How the U.S. Negotiates Free Trade Agreements*

Panelists: Oona Hathaway, Mark Wu, David Levine, Richard Steinberg, Amy Kapczynski (moderator)

The United States has a special statutory scheme for negotiating free trade agreements, “Fast track.” Is Fast Track necessary, or undemocratic, or both? How does it compare to the other ways the U.S. negotiates international agreements? Is Fast Track inherently secretive, or do other mechanisms prevent transparency? What are the effects, if any, of Wikileaks’s leaked trade agreement texts on the process, on domestic policymaking? Would Fast Track be more effective or more appropriate if the subject matter of trade agreements did not extend to areas like IP and the environment?

12:00pm-1:30pm (Room 127)

*Panel II: The Internet, Free Trade, and Transparency: An International Perspective*

Panelists: Michael Geist, Peter Yu, Ante Wessels, Margot Kaminski (moderator)

Why is Wikileaks leaking draft free trade agreements - what do they have to do with the Internet? Does international Internet lawmaking belong in the international trade regime? If not, how did it end up there, and where does it belong? What are the institutional features

of the international trade regime: does it afford adequate participation and accountability, compared to other forums for global governance? Compared to other international regimes, is trade more effective at producing finalized agreements? How do other countries/regions handle free trade negotiations—how much participation/transparency happens at a local level? Have the Wikileaks revelations changed the face of international trade negotiations? Does the Internet change public understandings of how much transparency is necessary for global or regional governance?

### Panelist Biographies:

#### [Michael Geist](#)

Dr. Michael Geist is a law professor at the University of Ottawa where he holds the Canada Research Chair in Internet and E-commerce Law. He has obtained a Bachelor of Laws (LL.B.) degree from Osgoode Hall Law School in Toronto, Master of Laws (LL.M.) degrees from Cambridge University in the UK and Columbia Law School in New York, and a Doctorate in Law (J.S.D.) from Columbia Law School. Dr. Geist is an internationally syndicated columnist on technology law issues with his regular column appearing in the Toronto Star and the Ottawa Citizen. Dr. Geist is the editor of *From "Radical Extremism" to "Balanced Copyright": Canadian Copyright and the Digital Agenda* (2010) and *In the Public Interest: The Future of Canadian Copyright Law* (2005), both published by Irwin Law, the editor of several monthly technology law publications, and the author of a popular blog on Internet and intellectual property law issues.

#### [Oona A. 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.

#### [Margot Kaminski \(moderator\)](#)

Margot E. Kaminski is a Research Scholar in Law, Executive Director of the Information Society Project, and Lecturer in Law at Yale Law School. She is a graduate of Harvard University and Yale Law School and a former fellow of the Information Society Project. While at Yale Law School, she was a Knight Law and Media Scholar and co-founder of the Media Freedom and Information Access Practicum. Following graduation from Yale Law School, she clerked for The Honorable Andrew J. Kleinfeld of the Ninth Circuit Court of Appeals. She has been a Radcliffe Research Fellow at Harvard and a Google Policy Fellow at the Electronic Frontier Foundation. Her research and advocacy work focuses on media freedom, online civil liberties, data mining, and surveillance issues.

She has written widely on law and technology issues for law journals and the popular press and has drawn public attention to the civil liberties issues surrounding the Anti-Counterfeiting Trade Agreement.

#### [Amy Kapczynski \(moderator\)](#)

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.

#### [David Levine](#)

David S. Levine is an Associate Professor of Law at Elon University School of Law and an Affiliate Scholar at the Center for Internet and Society at Stanford Law School (CIS). He is also the founder and host of Hearsay Culture on KZSU-FM (Stanford University), an information policy, intellectual property law and technology talk show for which he has recorded over 190 interviews since May 2006. Hearsay Culture was named as a top five podcast in the ABA's Blawg 100 of 2008 and can be found at <http://hearsayculture.com>. His scholarship, which has been published in several law reviews including Florida, North Carolina and Stanford Online, focuses on the operation of intellectual property law at the intersection of technology and public life, specifically information flows in the lawmaking and regulatory process and intellectual property law's impact on public and private secrecy, transparency and accountability. He has spoken about his work in numerous venues, from the American Political Science Association annual meeting to the Information Society Project at Yale Law School, and internationally.

### Richard Steinberg

Richard Steinberg is Professor of Law at the University of California, Los Angeles, and Visiting Professor of International Relations at Stanford. He is also Director of the [Sanela Diana Jenkins Human Rights Project](#), and Editor-in-Chief of [www.ICCforum.com](#), a collaboration with the Office of the Prosecutor of the International Criminal Court.

Professor Steinberg writes and teaches in the areas of international law and international relations. He has lectured about international law and politics on six continents, and has produced over forty articles and six books on international law. Recent books include: *Assessing the Legacy of the ICTY* (Martinus Nijhoff, 2011; BCS translation, ICTY, 2011), *International Institutions* (co-edited) (SAGE, 2009), *International Law and International Relations* (co-edited) (Cambridge University Press, 2007), and *The Evolution of the Trade Regime: Economics, Law, and Politics of the GATT/WTO* (co-authored) (Princeton University Press, 2006; Chinese translation, Peking University Press, 2013).

Professor Steinberg serves on the Board of Editors of the *American Journal of International Law*, and is a Member of the Council on Foreign Relations. He earned a B.A. degree at Yale in 1982, and J.D. and Ph.D. degrees at Stanford in 1986 and 1992, respectively.

### Ante Wessels

Ante Wessels is involved as an analyst with the Foundation for a Free Information Infrastructure (FFII) and the Vrijschrift Foundation. For Vrijschrift he is a liaison to the European Digital Rights initiative (EDRi). He obtained a first university degree (kandidaats) in law at the University of Amsterdam, and studied at the Academy of Fine Arts AKI in Enschede. For many years he worked as a painter and was involved with graphical and licensing aspects of the open source K desktop environment. He was a board member of the Vrijschrift Foundation. Ante Wessels has been involved in the debates on the EU software patents directive, rejected by the European Parliament in 2005; the Criminal measures aimed at ensuring the enforcement of intellectual property rights

directive proposal, withdrawn by the EU Commission in 2010; and the Anti-Counterfeiting Trade Agreement (ACTA), rejected by the European Parliament in 2012. He filed complaints with the European Ombudsman against the EU Council over ACTA negotiation documents and twice against the European Parliament over access to ACTA ratification documents. For Vrijschrift and the FFII he now follows trade agreements with a focus on intellectual property rights, openness and investor-to-state dispute settlement.

### Mark Wu

Mark Wu is an Assistant Professor of Law at Harvard Law School, where he teaches international trade and international economic law. Previously, he served as the Director for Intellectual Property in the Office of the U.S. Trade Representative where he was the lead U.S. negotiator for the IP chapters of several free trade agreements. He also worked as an engagement manager for McKinsey & Co. where he focused on high-tech companies. He began his career as an economist and operations officer for the World Bank in China, working on environmental, urban development, health, and rural poverty issues. He has also served as an economist for the United Nations Development Programme in Namibia. After earning a J.D. from Yale Law School, he clerked for Judge Pierre Leval on the U.S. Court of Appeals for the Second Circuit and was an Academic Fellow at Columbia Law School. He received his M.Sc. in Development Economics from Oxford University, which he attended on a Rhodes Scholarship, and his A.B. summa cum laude in Social Studies and East Asian Studies from Harvard University.

### Peter Yu

Peter K. Yu (余家明) holds the Kern Family Chair in Intellectual Property Law and is the founding director of the Intellectual Property Law Center at Drake University Law School. He has served as Wenlan Scholar Chair Professor at Zhongnan University of Economics and Law in Wuhan, China and a visiting professor of law at the University of Haifa, the University of Hong Kong, the University of Strasbourg and Washington and Lee

University. Before joining Drake University, he founded the nationally-renowned Intellectual Property & Communications Law Program at Michigan State University, at which he held faculty appointments in law, communication arts and sciences, and Asian studies.

Born and raised in Hong Kong, Professor Yu is a leading expert in international intellectual property and communications law. He also writes and lectures extensively on international trade, international and comparative law, and the transition of the legal systems in China and Hong Kong. A prolific scholar and an award-winning teacher, he is the author or editor of five books and more than 100 law review articles and book chapters. He serves as the general editor of The WIPO Journal published by the World Intellectual Property Organization (WIPO) and chairs the Committee on International Intellectual Property of the American Branch of the International Law Association.

Professor Yu has spoken at events organized by WIPO, the International Telecommunication Union, the U.N. Conference on Trade and Development (UNCTAD), the U.N. Educational, Scientific and Cultural Organization (UNESCO), the Chinese, EU and U.S. EU governments and at leading research institutions from around the world. His lectures and presentations have spanned more than 25 countries on all continents except Antarctica. He is a frequent commentator in the national and international media. His publications have appeared in Chinese and English and have been translated into Arabic, French, Japanese, Persian, Portuguese, Spanish and Vietnamese. They are available on his website at [www.peteryu.com](http://www.peteryu.com).





YALE LAW SCHOOL

## The Information Society Project

### Law Enforcement & Hacking: When Cops Control your Webcam



1:10 pm  
Tuesday, Feb. 18  
Levinson Auditorium  
Law School

#### Panel 1: The Hacking Technologies Used by Law Enforcement

Kevin Poulsen, *Investigations Editor, Wired (moderator)*  
Christopher Soghoian, *Principal Technologist, ACLU*  
Morgan Marquis-Boire, *Citizen Lab*  
Ashkan Soltani, *Independent Consultant*  
Matt Blaze, *Associate Professor, University of Pennsylvania*  
Axel Ambak, *Researcher, Institute for Information Law, University of Amsterdam*

#### Panel 2: The Legal and Policy Implications of Hacking by Law Enforcement

Jennifer Valentino-Devries, *The Wall Street Journal (moderator)*  
Magistrate Judge Steve Smith  
Professor Laura Donahue, *Georgetown University Law Center*  
Stephanie Pell, *Principal, SKP Strategies LLC*  
Justin Rood, *Senate Committee on Homeland Security and Governmental Affairs*  
Ahmed Ghappour, *Clinical Instructor, The National Security Clinic, UT Law School*

*Thomson Reuters Speaker Series*



THOMSON REUTERS

## **When the Cops Control Your Webcam: A law and technology conference focused on law enforcement hacking and the use of malware**

Without any public debate or explicit congressional authorization, US law enforcement agencies are now in the hacking business. Federal law enforcement agencies have acquired sophisticated tools which they can, and regularly do use to hack into the computers of targets, remotely enabling webcams, turning on microphones, and downloading documents and other files from the infected computers. Less sophisticated, off-the-shelf hacking and surveillance tools will inevitably be purchased by local and state law enforcement agencies, if they don't already have them. The serious legal, policy and technology issues associated with use of such hacking tools will be the focus of a two-panel conference, **February 18th, 1:00 pm at Yale Law School; Levinson Auditorium**. The event is sponsored by Thomson Reuters.

### [Panel 1: The hacking technologies used by law enforcement](#)

Jennifer Valentino-Devries, The Wall Street Journal (moderator)  
Christopher Soghoian, Principal Technologist, ACLU  
Morgan Marquis-Boire, Citizen Lab  
Ashkan Soltani, Independent Consultant  
Matt Blaze, Associate Professor, University of Pennsylvania  
Axel Arnbak, Researcher, Institute for Information Law, University of Amsterdam

### [Panel 2: The legal and policy implications of hacking by law enforcement](#)

Jennifer Valentino-Devries, The Wall Street Journal (moderator)  
Magistrate Judge Steve Smith  
Professor Laura Donahue, Georgetown University Law Center  
Stephanie Pell, Principal, SKP Strategies LLC  
Justin Rood, Senate Committee on Homeland Security and Governmental Affairs  
Ahmed Ghappour, Clinical Instructor, The National Security Clinic, UT Law School



YALE LAW SCHOOL

## The Information Society Project

creativity commons contracts copyright  
innovation law taxes grants patents  
culture immigration infrastructure prizes Yale ISP incentives regulation education  
beyond IP institutions privacy  
science equity



Sunday, March 30, 2014

8:00am - 5:00pm

Room 127

Yale Law School

Michael Abramowicz

Ian Ayres

Barton Beebe

Yochai Benkler

James Bessen

Mario Biagioli

Kiel Brennan-Marquez

Dan Burk

Michael Burstein

Julie Cohen

Bryan Choi

Rochelle Dreyfuss

Rebecca Eisenberg

Brett Frischmann

Roger Ford

John Golden

Daniel Hemel

Camilla Hrdy

Margot Kaminski

Amy Kapczynski

Mark Lemley

Orly Lobel

Jonathan Masur

Mark McKenna

Fiona Murray

Sean O'Connor

Lisa Larrimore Ouellette

Sean Pager

Frank Pasquale

Arti Rai

Bhaven Sampat

Pam Samuelson

Jessical Silbey

Talha Syed

Liza Vertinsky

Hannah Wiseman

Brian Wright

Tal Zarsky

To Register: [www.yaleisp.org/event/innovation-law-beyond-ip](http://www.yaleisp.org/event/innovation-law-beyond-ip)

*Thomson Reuters Speaker Series*



THOMSON REUTERS

## **Innovation Law Beyond IP**

Sunday, March 30, 2014

Intellectual property law is only one of many legal institutions that can help promote, stifle, or govern knowledge production. For example, government also transfers rewards to innovators through tax incentives, grants, and prizes; regulates innovation through the administrative state (the EPA, FTC, SEC, CPFB etc.); creates legal rules and infrastructures that can help sustain or undermine commons-based production; and influences innovation through law and institutions related to immigration, tort law, education, and more. How do forms of law and governance beyond IP promote innovation, as well as values such as equity, privacy, and democracy? How should these systems be combined, both with one another and with IP law?

This event is sponsored by Thomson Reuters. Please click on the session title to view the video.

### [Plenary Session](#)

#### [Comparing Innovation Policy Levers](#) – Room 129

*Beyond the Patents-Prizes Debate*

Daniel Hemel & Lisa Larrimore Ouellette

*The Fracking Revolution: A Case Study in Policy Levers to Promote Innovation*

John Golden & Hannah Wiseman

Commentators: Rebecca Eisenberg, Michael Abramowicz

#### [Cultural Production Without IP](#) – Room 128

*Incubating Indies: New Distributed Models to Support Diverse Culture*

Sean Pager

*Real Accounts from Creators and Innovators: Making Do with an Intellectual Property Misfit*

Jessica Silbey

Commentators: Pam Samuelson, Barton Beebe

[Regulation and Institutions](#) – Room 129

*Innovation Sticks*

Amy Kapczynski & Ian Ayres

*Comparative Analysis of Failures and Institutions in Context*

Brett Frischmann & Mark McKenna

Commentators: Yochai Benkler, Mark Lemley

[Privacy and Innovation](#) – Room 128

Roundtable discussants: Bryan Choi, Julie Cohen, Frank

Pasquale, Tal Zarsky

Moderator: Margot Kaminski

[Prizes and Grants](#) – Room 129

*Governing Innovation Prizes*

Michael Burstein & Fiona Murray

*The Unexpected Political Economy of Serendipity*

Bhaven Sampat

Commentators: Jonathan Masur, Brian Wright

[Organizational Structures](#) – Room 128

*Corporate Structures for Innovation*

Dan Burk

*Public-Private Partnerships as Innovation Strategies*

Liza Vertinsky

Commentators: Roger Ford, Sean O'Connor

[Direct Government Incentives—Procurement and Venture Capital Programs](#) – Room 129

*Local Commercialization Incentives*

Camilla Hrdy

*Incentives To Develop Whose Knowledge?*

Jim Bessen

Commentators: Talha Syed, Arti Rai

[Innovation and Human Capital](#) – Room 128

Roundtable discussants: Orly Lobe, Mario Biagioli, Rochelle

Dreyfuss

Moderator: Kiel Brennan-Marquez

## **Participants**

Michael Abramowicz

Ian Ayres

Barton Beebe

Yochai Benkler

James Bessen

Mario Biagioli

Kiel Brennan-Marquez

Dan Burk

Michael Burstein

Julie Cohen

Bryan Choi

Rochelle Dreyfuss

Rebecca Eisenberg

Brett Frischmann

Roger Ford

John Golden

Daniel Hemel

Camilla Hrdy

Margot Kaminski

Amy Kapczynski

Mark Lemley

Orly Lobel

Jonathan Masur

Mark McKenna

Fiona Murray

Sean O'Connor

Lisa Larrimore Ouellette

Sean Pager

Frank Pasquale

Arti Rai

Bhaven Sampat

Pam Samuelson

Jessical Silbey

Talha Syed

Liza Vertinsky

Hannah Wiseman

Brian Wright

Tal Zarsky



## Foreign Affairs in the Internet Age

**Sunday, April 6, 2014  
9:30 am - 5:00 pm  
Room 127, Yale Law School**

### **Big Data Symposium**



10:00 am- 11:30 am

**Big Data and Foreign Surveillance – U.S. Law & Institutions**

Panelists: Anita Allen, Ronald Lee, Ira Rubinstein, Julian Sanchez

1:00 pm - 3:00 pm

**Big Data and the Global Community –Transnational Law & Institutions**

Panelists: Peter Asaro, April Glaser, Peter Margulies, Wendell Wallach

3:15 pm - 5:00 pm

**Big Data and Border Flows –Trade Agreements & Foreign Regulators**

Panelists: Anupam Chander, Joris van Hoboken, Chris Wolf

Co-sponsored by:

**Yale Journal of Law and Technology (YJOLT)**

**This event is made possible by sponsorship from the**

**Oscar M. Ruebhausen Fund**



**YALE LAW SCHOOL**  
**The Information Society Project**

# **Big Data Symposium**

## **April 6, 2014**

Given the clear privacy implications, big data has become the subject of legal scholarship, with a focus on U.S. consumer, medical, and criminal law. But surprisingly, international policy concerns arising from or exacerbated by big data remain largely unexplored. Yet at the same time, revelations about extraterritorial U.S. bulk data collection and the rise of data privacy standards as an issue in trade agreements show that such international concerns are pressing.

Co-sponsored by the Foreign Affairs in the Internet Age initiative of the Information Society Project at Yale Law School (“FAIA”) and the Yale Journal of Law & Technology (“YJOLT”) and the Oscar M. Rubenhausen Fund. This one-day event focused on big data concerns arising in an international context.

### **AGENDA**

9am - Breakfast- Dining Hall

10am

#### **Panel I: Big Data and Foreign Surveillance – U.S. Law & Institutions**

Media reports in recent months have revealed an array of surveillance programs that the U.S. government operates around the globe to collect and analyze the telephone metadata, location information, and Internet traffic of vast numbers of foreigners. Like their domestic counterparts, these overseas efforts raise powerful questions about individual privacy, the right to anonymous speech, freedom of association, and other values – but in the case of foreign surveillance, those surveilled cannot rely on their own democratic institutions to provide oversight or act as a check. David Cole writes, “American law and politics have long taken the view that our constitutional and statutory privacy protections are limited to persons within the United States, and US

citizens outside our borders. Can that long-held view still hold in this new age of foreign surveillance?

Panelists:

-Ronald Lee

-Ira Rubinstein

-Julian Sanchez

1pm

### **Panel II: Big Data and the Global Community – Transnational Law & Institutions**

Even if domestic laws do not restrict one country from engaging in bulk data collection of other nations' citizens outside of its own borders, transnational law and institutions might hem in these practices. Do universal human rights obligations prohibit bulk data collection? What role, if any, should the United Nations play in providing oversight? Given reports that data collected under these programs have been used to target drone strikes, are the laws of war implicated?

Panelists:

-Peter Asaro

-Peter Margulies

-April Glaser

3:15pm

### **Panel III: Big Data and Border Flows – Trade Agreements & Foreign Regulators**

Big data implicates international privacy concerns in large part because personal data is collected and stored by private companies, not just governments. And increasingly, trade agreements and foreign regulators (particularly in the EU) are trying to govern the flow of data across borders with an eye towards protecting the privacy interests of non-US persons. What promise do these strategies hold? Which regulators should be taking the lead? What should these standards be?

Panelists:

-Anupam Chander

-Chris Wolf

-Joris van Hoboken



# Freedom of Expression Scholars Conference May 3-4, 2014

The Information Society Project at Yale Law School will host the first Freedom of Expression Scholars Conference (FESC) at Yale Law School on May 3-4, 2014. 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

**BJ Ard** - Thomson Reuters Resident Fellow, Information Society Project, Yale Law School

**Enrique Armijo** - Associate Professor of Law, Elon University 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

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

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

**Nicholas Bramble** - Senior Policy Fellow, Google

**Kiel Brennan-Marquez** - Resident Fellow, Information Society Project, Yale Law School

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

**Danielle Citron** - Professor of Law, University of Maryland Francis King Carey School of Law

**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

**Hillary Greene** - Professor of Law, University of Connecticut School of Law

**James Grimmelman** - Professor of Law, University of Maryland Francis King Carey School of Law

**David Han** - Associate Professor of Law, Pepperdine University School of Law

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

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

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

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

**Jeremy Kessler** - David Berg Foundation Fellow, Tikvah Center for Law & Jewish Civilization, New York University

**Randy Kozel** - Associate Professor of Law, University of Notre Dame Law School

**Laura Little** - Charles Klein Professor of Law, Temple University Beasley School of Law

**Greg Magarian** - Professor of Law, Washington University Law School

**Jonathan Manes** - Associate Research Scholar in Law and Abrams Clinical Fellow, Information Society Project, Yale Law School

**Toni Massaro** - Regents' Professor, University of Arizona, James E. Rogers College of Law

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

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

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

**Pranesh Prakash** - Postgraduate Associate in Law and Access to Knowledge Fellow, Information Society Project, Yale Law School

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

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

**Lee Rowland** - Staff Attorney, ACLU Speech, Privacy and Technology Project

**Esteve Sanz** - Resident Fellow, Information Society Project, Yale Law School

**David Thaw** - Visiting Assistant Professor, University of Connecticut School of Law

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

**Andrew Tutt** - Law Clerk and Visiting Fellow, Yale Information Society Project

**Felix Wu** - Associate Professor of Law, Cardozo School of Law

**Tim Zick** - Mills E. Godwin, Jr. Professor of Law, William & Mary Law School

## **AGENDA**

The basic workshop format was as follows:

The discussant (not the author) presented the paper to the group and provided 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 proceeded into a roundtable discussion moderated by the discussant.

The expectation was that all workshop participants will have read the paper beforehand.

### **Saturday, May 3, 2014**

Registration - Room 122

*8:30-9:00 – Breakfast (Dining Hall)*

*9:00-9:15 – Welcome and Introduction – (Dining Hall)*

#### **9:15-10:30 – First Breakout Session**

Hillary Greene,

Room 121

*Product Redesign as Commercial Expression: Antitrust Treatment of Speech and Innovation*

Discussant: Devan Desai

Neil Richards

Room 129

*Why Data Privacy Law is (Mostly) Constitutional*

Discussant: BJ Ard

Alexander Tsesis  
*Free Speech Constitutionalism*  
Discussant: Toni Massaro

Room 128

*11-12:15 – Second Breakout Session*  
James Grimmelman  
*Active Listening*  
Discussant: Jack Balkin

Room 129

Randy Kozel  
*Second Thoughts about the First Amendment*  
Discussant: Alan Chen

Room 121

Laura Weinrib  
*Civil Liberties Enforcement and the New Deal State*  
Discussant: Jeremy Kessler

Room 128

*12:15-1:15 – Lunch (Dining Hall)*

**1:15-3:00 – Third Session – Plenary (Room 129)**

- Enrique Armijo, *Government-Provided Internet Access: Terms of Service as Speech Rules*
- Jack Balkin, *Old School/New School Speech Regulation*
- Derek Bambauer, *Against Jawboning*
- Discussant: Margot Kaminski

**3:30-4:45 – Fourth Breakout Session**

David Han

Room 110

*Flexible Remedies in Speech-Tort Jurisprudence*

Discussant: Mary-Rose Papandrea

Helen Norton

Room 121

*When Government Lies: The Constitutional Implications of the Government's Deliberate Falsehoods*

Discussant: Jonathan Manes

Felix Wu

Room 129

*The Commercial Difference*

Discussant: Tamara Piety

Stephen Feldman

Room 128

*Constitution Betrayed: Free Expression, the Cold War, and the End of Democracy*

Discussant: Thomas Healy

**5:15-6:30 – Fifth Breakout Session**

Leslie Kendrick

Room 121

*Speech as Special*

Discussant: Tim Zick

Laura Little

Room 128

*Why is Censorship Funny?*

Discussant: David Thaw

Kiel Brennan-Marquez

Room 129

*The Freedom Not to Think*

Discussant: Jane Bambauer

*7:00 – Dinner Heirloom (1157 Chapel Street)*

**Sunday, May 4, 2014:**

*8:30-9:00 – Breakfast (Dining Hall)*

**9:00-10:15 – Sixth Breakout Session**

John Inazu

Room 129

*Re-Assembling Labor*

Discussant: Tabatha Abu El- Haj

Kerry Monroe

Room 121

*Unreasonable Access: Disguised Issue Advocacy and the Role of Broadcasters in Shaping Public Discourse*

Discussant: Vince Blasi

Andrew Tutt

Room 128

*The Revisability Principle*

Discussant: Joseph Blocher

**10:45-12:00 – Seventh Session –Plenary (Room 129)**

- Danielle Citron, *Revenge Porn*
- Discussant: Lee Rowland

*12:00-1:30 – Lunch (Dining Hall)*

**1:30-2:45 – 8th Breakout Session**

Nicholas Bramble

Room 121

*Speech and Safety Laboratories*

Discussant: Pranesh Prakash

Jeremy Kessler

Room 129

*First Amendment Challenges to Economic Regulation in the Jehovah's Witness Cases*

Discussant: Laura Weinrib

Esteve Sanz

Room 128

*The First Amendment and Cultural Creation*

Discussant: Kiel Brennan-Marquez

# **ACTIVITIES AND SPECIAL EVENTS**



# Access To Knowledge A2K

## **A2K4D Annual Workshop- Cairo, Egypt**

June 16-17, 2014

The [Access to Knowledge for Development Center \(A2K4D\)](#) at [The American University in Cairo School of Business](#) is hosting its annual workshop in Cairo, Egypt on June 16-17, 2014.

The two day workshop brought together A2K4D's different networks and stakeholders from across several countries. The workshop seeks to increase the visibility of the collaborative efforts between: A2K4D and members of the [Open African Innovation Research Project \(Open A.I.R.\)](#), Harvard's Berkman Center for Internet and Society, Yale Law School's Information Society Project (ISP) and members of the [Access to Knowledge Global Academy](#), among stakeholders which include academia, policy makers, civil society, and activists in Northern Africa.

The ISP's executive director [Valerie Belair-Gagnon](#), Access to Knowledge fellow [Pranesh Prakash](#), Resident Fellow [Navid Hassanpour](#), and incoming Knight Law and Media Program fellow [Colin Agur](#) will be attending, along with ISP visiting fellow alumnus [Carlos Affonso Pereira de Souza](#).

## **A2K Speaker Series: Andrew Rens**

Tuesday, April 15, 2014 - 12:00pm to 1:30pm

*"Education knowledge resources as Infrastructure"*

ABSTRACT: Should educational knowledge resources be regarded as infrastructure? Brett Frischmann theorizes infrastructure as conceptually important for both macro and micro economics. As intermediate capital resources infrastructure enables actors to engage in productive activities that would otherwise be impossible or costly. Productive activities enabled by infrastructure often generate spillovers; benefits to third parties. Infrastructure is

thus important from a policy perspective, justifiably publicly provided, often best managed as a commons.

While infrastructure includes both physical infrastructure such as roads and intangible infrastructure including the Internet, can this analysis enable a re-conceptualization of educational knowledge resources such as textbooks? Should education knowledge resources be treated as infrastructure and what are the policy implications?

Link: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2000962](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2000962)

"Infrastructure : the Social Value of Shared Resources  
(Introduction), Brett M Frischmann"

BIO: Andrew Rens is a scholar of the complex interactions of law, knowledge, and innovation. Rens teaches in [Access to Medicines: Intellectual Property and Global Public Health](#) at Duke Law School where he is writing a dissertation on the use of open licenses in education as an [SJD candidate](#).

### **A2K Virtual Speaker Series: Caroline Ncube**

Tuesday, February 4, 2014 - 12:00pm

*"Effects of the IP Regime on Generating Value from Publicly-Funded Research: A Study of Two South African Universities"*

Yale Law School's Information Society Project, in collaboration with the Access to Knowledge Development Center at American University in Cairo and Open A.I.R. cordially invite you to Prof. Caroline Ncube's talk on "Effects of the IP Regime on Generating Value from Publicly-Funded Research: A Study of Two South African Universities.

**Abstract:** Prof. Ncube's talk will highlight the experience of two South African universities with the South African equivalent of the US Bayh-Dole Act. The case study sought to add to hitherto theoretical analysis of the Act through interviewing researcher-inventors and technology transfer office staff to explore the impact of the Intellectual Property Rights from Publicly Financed Research Act, 2008 on their work in general and specifically on open access dissemination of their research.

BIO: Caroline Ncube holds a PhD from the University of Cape Town. Her doctoral thesis examined the intellectual property protection of e-commerce business methods within the context of South Africa's tourism SMEs. She obtained her LLB from the University of Zimbabwe and her LLM from the University of Cambridge where she majored in Intellectual Property Law and Company Law.

### **A2K South Africa 2013**

Monday, December 9, 2013 - 9:00am to Friday, December 13, 2013

A gathering of the Access to Knowledge (A2K) Global Academy will be convened by the Information Society Project (Yale) on December 9, 2013 in Capetown, South Africa. 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.

### **Is Obama Trading Away Health and Free Speech?**

Thursday, December 5, 2013 - 4:00pm

The Trans-Pacific Partnership (TPP) Agreement is a controversial new trade agreement, which will set new benchmarks for trade rules in many areas. The negotiations, between the US and 11 trading partners, have been criticized as untransparent, and drafts of the treaty text have been kept secret for years. A week ago, Wikileaks published a draft of the intellectual property chapter - perhaps the most controversial part of the agreement. The Washington Post called it "a Hollywood wish list," and Doctors Without Borders/MSF has criticized it as a "grave danger" to access to medicines.

What in fact is at stake in the TPP? Will its provisions significantly affect access to medicines? Does it have implications for free speech or free culture? Can values of

democracy and transparency be reconciled with the closed-door TPP process?

Speaker Bios:

**Margot Kaminski** is a Lecturer in Law and Research Scholar in Law at Yale Law School. She also serves as Executive Director of the Information Society Project at Yale Law School. She is a graduate of Harvard University and Yale Law School. Her research focuses on international copyright, media freedom, online civil liberties, data mining, and surveillance. She has written extensively on law and technology issues for law journals and the popular press, and has drawn public attention to the Anti-Counterfeiting Trade Agreement.

**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.

**Krista L. Cox** is an attorney with the international non-profit organization Knowledge Ecology International (KEI), which searches for better outcomes, including new solutions, to the management of knowledge resources. In particular, KEI has expertise in access to medicines and access to knowledge issues. Prior to her present position, Krista worked as the staff attorney for the Universities Allied for Essential Medicines (UAEM). Krista received her J.D. with honors from the University of Notre Dame and her B.A. from the University of California Santa Barbara. She is experienced in patents, copyright,

enforcement of intellectual property, international law, trade and human rights. Krista is licensed to practice in the state of California, the Court of Appeals for the Federal Circuit, and the Supreme Court of the United States.

This event is co-hosted by the Yale Law School Information Society Project, Yale Global Health Justice Partnership, and Yale Universities Allied for Essential Medicines.

# Foreign Affairs in the Internet Age (FAIA)

## **Speakers:**

October 21

**Christof Heyns**, UN Special Rapporteur

October 30

**Farida Shaheed**, UN Special Rapporteur

April 8

**Rajesh De**, General Counsel of the National Security Agency

## **Panels:**

September 19

*NSA Surveillance and Foreign Affairs*

February 10

*Trade and Transparency in the Internet Age*

April 6

*Big Data Symposium*

# Knight Law & Media Speaker Series

## Speakers:

December 5, 2013

*Investigative Reporting, Espionage and NSA Leaks*

February 25, 2014

*From Delhi to Steubenville: Media Coverage of Rape*

Moderator: **Inderpal Grewal**, Prof WGSS, Anthropology, and American Studies and Anthropology; Chair Women's, Gender, and Sexuality Studies (WGSS), Yale University

Panelists:

**Radha S. Hegde**, Associate Professor, Media, Culture and Communication, New York University

**Rupal Oza**, Director, The Women and Gender Studies Program, Hunter College, CUNY

**Daniel Drache**, Senior Research Fellow Robarts Centre for Canadian Studies, York University and Professor Emeritus Political Science

**Colin Agur**, PhD candidate at Columbia University and Visiting Fellow at Information Society Project at Yale Law School

March 10, 2014

**Nabiha Syed**, *New Newsgathering: Drones, Sensors, and Scraping*

March 27, 2014

**Veronica Dillon**, Senior Vice President and General Counsel at The Washington Post Company

March 27, 2014

**Sarah Stillman**, Poynter Fellow

*Making Injustice Legible: A Conversation on Narrative Journalism and the Law*

April 7, 2014

**Sean Coit**, *The Role of Political Communications in Policy Making*

April 22, 2014

**Judge Andrew D. Hurwitz** and **Linda Greenhouse**: *The State of Nominations and Confirmations*

# THOMSON REUTERS

## SPEAKER SERIES

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### **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.

### **Fall 2013**

September 12

**Anupam Chander**, *The Electronic Silk Road: How the Web Binds the World Together in Commerce*

October 3

**Peter Andreas**, *America's Illicit Industrial Revolution and Lessons for Today's Intellectual Property Theft Debate*

October 15

**Fred von Lohmann**, *Revising the Copyright Act for the 21st Century*

October 31

**Mario Biagioli**, *Between Intellectual Property, Kinship, and Slavery: The Strange Lives of Plagiarism*

November 11

**Tom Rubin**, *Achieving Copyright at the Speed of Light*

November 14

**Katherine Strandburg**, *Freedom of Association and Metadata Surveillance*

November 21

**Deven Desai**, *Patents, Meet Napster: 3D Printing and the Digitization of Things*

December 3

**Neil Richards**, *Why Surveillance Is Dangerous*

## **Spring 2014**

February 20

**Cass Sunstein**, [\*Liberty and Security in a Changing World: The Report of the President's Review Group on Intelligence and Communications Technologies\*](#).

February 27

**Laura DeNardis**, *The Global War for Internet Governance*

March 3

**Annemarie Bridy**, *Carpe Omnia: Civil Asset Forfeiture in the War on Drugs and the War on Piracy*

March 6

**Jane Bambauer**, *Is Data Speech?*

March 13

**John Duffy**, *Paper Patents, Patent Trolls and the Theory of the Patent System*

April 3

**Marc Blitz**, *Freedom of Speech, The Right of Privacy, and Psychotherapy*

April 16

**Tim Wu**, *Your Attention Please: Neuro-processing as a scarce resource*

April 17

**Dov Fox**, *Subversive Science*

April 24

**Stephan Urbach**, *Revolution and Technology: A Political Framing*

# INFORMATION SOCIETY PROJECT

## “IDEAS LUNCHES”

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### 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 (2013-2014), informal guest speakers led animated discourses on a wide range of subjects, including:

#### **Sept. 9, 2013**

Jonathan Manes, new Abrams Clinical Fellow and students from our Media Freedom and Information Access Clinic.

#### **Sept. 18, 2013**

Chris Francescani, a reporter from Reuters, talked about his coverage of domestic drones.

#### **Sept. 25, 2013**

Off-the-record conversation with a special guest attorney from Thomson Reuters who discussed some cutting-edge issues in copyright doctrine

#### **Oct. 2, 2013**

Rob Faris and Bruce Etling from Harvard's Berkman Center will join us to discuss their recent work, which studies the evolution of public debates online.

#### **Oct. 9, 2013**

JR Logan of Make Haven talked about the "Maker" movement, its connection to the web, and its presence in New Haven.

#### **Oct. 16, 2013**

**Yana Welinder**, legal counsel for the Wikimedia Foundation. Wikimedia hosts 12 free knowledge projects, including Wikipedia, and all of the content on these projects is created by volunteers worldwide.

**Oct. 23, 2013**

**David Schulz**, national expert on freedom of information and access to courts.

**Nov.6, 2013**

**Anselm Spoerri**, a faculty member at the Rutgers School of Communication and Information, will join us to discuss his recent work analyzing and visualizing Wikipedia's "edit wars."

**Nov.13, 2013**

**Kate Darling**, a research specialist at MIT Media Lab, joined us to discuss near-term ethical, legal, and societal issues in robotics

**Nov. 20, 2013**

"Stigma" and "Beat Walker" Rough Cut Editing Workshop  
The **Yale Visual Law Project** (VLP), housed at ISP, investigates public interest legal issues through documentary film,.

**Dec. 4, 2013**

**Christina Mulligan**, ISP alum and professor of University of Georgia – Athens, discussed her new job.

**Dec. 11, 2013**

**Molly Sauter**, discussed The Digital Street: Disruption and the Dilemma of Civil Disobedience Online.

**Jan. 22, 2014**

**Irina Manta** for discussion of her attached paper, "Intellectual Property and the Presumption of Innocence."

**Jan. 29, 2014**

**David Robinson**, Collateral Freedom: A Snapshot of Chinese Users Circumventing Censorship

**Feb. 5, 2014**

**Christopher E. Mason**, discussed "Genetic liberty from genes to people, from cells to cities."

**Feb.12, 2014**

**Fred Richin**, discussed societal issues surrounding the digital image.

**Feb. 19, 2014**

**Kara W. Swanson**, discussed "Patents, Politics, and Abortion."

**Feb. 26, 2014**

**Eden Medina**, discussed Designing Technology for Political Change: The Case of Chilean Cybernetics.

**Mar.5, 2014**

**Adam Sinnreich** discussed piracy crusade

**Mar 12, 2014**

**Camilla Hrdy**, ISP resident fellow, Local Commercialization Incentives

**Mar. 26**

**Nicholas Merrill** of Calyx discussed National Security Letters (NSLs) and privacy by design.

**Apr. 2, 2014**

**Dr. Nagla Rizk** of American University in Cairo discussed "An Alternative Assessment of Knowledge in the Arab World."

**Apr. 9, 2014**

**Dennis Hirsch**, of Capital University Law School The Glass House Effect: Big Data, the New Oil, and the Power of Analogy

**Apr. 16, 2014**

**Evan Selinger**, discussed The Problem of Outsourcing Humanity to Technology.

**Apr. 23, 2014**

**Amy Kapczynski** discussed Innovation Law beyond IP.

**Apr. 30, 2014**

**Manny Schecter**, Chief Patent Counsel of IBM, discussed patent reform.

**May 7, 2014**

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

# ABRAMS INSTITUTE FOR FREEDOM OF EXPRESSION

## Speakers

**September 17, 2013**

**Floyd Abrams**, *Friend of the Court*

**February 24, 2014**

*FOIA Bootcamp*

**February 25, 2014**

**Gaby Darbyshire**, *Expression Isn't Free? A Conversation with Gawker COO*

**March 4, 2014**

**Josh Lederman**, *Secrecy in the Obama Administration: A View from the White House Press Corps*

## Events

**May 3-4, 2014**

*Freedom of Expression Scholars Conference 2*

# PROGRAM FOR THE STUDY OF REPRODUCTIVE JUSTICE

## Events:

PSRJ hosted and co-sponsored conferences, roundtables, panels, speakers and reading groups that increase cross-fertilization between the academic and advocacy communities and among subject areas. Highlights of the events that we have sponsored or are co-sponsoring this academic year, which the Nolen-Bradley grant helped support, include:

### Program Activities and Events

Religious Freedom and Equality: An International Look: PSRJ co-sponsored a conference with the ACLU at Brooklyn Law School entitled “Religious Freedom and Equality: An International Look.” A distinguished group of advocates and academics gathered from across the globe to discuss the relationship between religious and secular authority. Much of the discussion focused on the question of whether religious exemptions or “accommodations” should be granted to those who claim that a generally applicable law enacted to accomplish an important secular purpose either prevents them from acting in a manner required by their religious beliefs, or requires them to act in a way that conflicts with their beliefs. We shared information about how national and international legal systems are wrestling with these tensions between religious and secular authority, and some of the ways in which different legal systems have addressed these issues. Cilla Smith gave the closing address at the conference and is publishing an article based on those comments in the Brooklyn Journal of Law and Policy.

Intersections in Reproduction: Perspectives on Abortion, Assisted Reproductive Technologies, and Judicial Review: Abortion and reproductive technologies have historically occupied separate realms in law, policy, and academia. In spite of some natural

overlap, scholarship exploring the relationship between abortion and assisted reproduction is sparse. On April 17-18, 2014, PSRJ, working in conjunction with the Petrie-Flom Center at Harvard Law School, will host a workshop to discuss papers that have been preliminarily selected for publication in a special issue of the *Journal of Law, Medicine and Ethics*, co-edited by Judith Daar (Whittier Law School) and Kimberly Mutcherson (Rutgers Law-Camden). The [Journal of Law, Medicine & Ethics](#) is a peer-reviewed journal published by the American Society of Law, Medicine & Ethics.

From Delhi to Steubenville: Media Coverage of Rape: PSRJ co-sponsored a panel discussion with the Knight Law and Media Program to discuss media coverage of rape and its impact on law reform in India and the United States. The panel brought together moderator, Inderpal Grewal, Chair of Women's, Gender, and Sexuality Studies, Yale University; Radha S. Hegde, Associate Professor of Media, Culture and Communication, New York University; Rupal Oza, Director, The Women and Gender Studies Program, Hunter College, CUNY; Daniel Senior Research Fellow, Robarts Centre for Canadian Studies, and Professor Emeritus of Political Science, York University; and Colin Agur, PhD candidate at Columbia University and Visiting Fellow at the Information Society Project at Yale Law School.

Speaker Series: PSRJ invited a series of speakers to the Law School to discuss such topics as the use and treatment of expert evidence in abortion cases; how politics influences women's access to contraceptives because of the Right's use of religious objections, particularly the ways in which the Patent and Trademark Office has been influenced by Right leaning politicians when considering patents for controversial inventions, including abortion methods; and the history of the Religious Right's movement to deny access to LGBT people to public accommodations based on religious claims.

Roundtable: Cilla Smith consulted with Professor Suzanne Goldberg of Columbia Law School in planning a gathering of gay

rights and reproductive rights advocates and academics to share knowledge and strategies. The gathering was sponsored by and held at CLS's Center for Gender and Sexuality. Cilla has been invited to submit a paper on movement strategies to the Columbia Journal of Gender and Law. We are planning on continuing this partnership and co-sponsoring a follow-up event.

### Research and Amicus Projects:

Over the course of the past year, PSRJ focused its research and writing efforts on two areas: the litigation-seeking exemptions from the Affordable Care Act's requirements that insurance plans cover contraception; and the development of legal standards applicable to abortion restrictions.

□ In support of our first focus area, Cilla Smith wrote a paper entitled *Who Decides Conscience: RFRA's Catch 22*, which will be published this spring in the Brooklyn Journal of Law and Policy, (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2402061](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2402061)). She also wrote a blog post on the impact of the Religious Freedom Restoration Act for Jack Balkin's Constitutional Law blog, Balkinization.

Also in support of this first focus area, our postdoctoral fellow, Kara Loewentheil, researched and wrote an important paper, *When Free Exercise Is a Burden: Protecting "Third Parties" in Religious Accommodation Law*.<sup>[1]</sup> In her paper, she argues that the current doctrine applicable to religious accommodation claims—both under the First Amendment and the Religious Freedom Restoration Act—is ill-suited to the contraceptive coverage requirement cases, in which a conflict exists between those who claim their religious exercise is being burdened, and existing third party rights-holders whose interests would be negatively affected by a grant of accommodation to an objector.<sup>[2]</sup> For these cases, she proposes a framework that would “vindicate[e] the purpose of religious accommodation rights [while also] protecting [existing rights holders] from the negative impact of

accommodations.”[3] While Kara argues that “current doctrine can be argued to obliquely support an emphasis on the interests of existing rights holders,” she also proposes “a framework that places a positive obligation on the state to respect all the substantial rights involved when possible, and that prioritizes equality-implicating rights when not possible.”[4]

□ In support of our second focus area, Cilla is in the process of writing a paper based on a presentation she gave at Washington & Lee School of Law. The paper is entitled *If the Purpose Fits: The Two Functions of Casey’s Purpose Inquiry* and will be published in the Washington & Lee Law Review.

□ Abortion Jurisprudence research: In support of our second focus area, Cilla is currently working on issues of reproductive rights jurisprudence with Professors Reva Siegel, Linda Greenhouse, and a number of students, all of whom are conducting supervised research projects. She is advising them on research into the divergent ways the courts have applied the legal standard set out in *Planned Parenthood v. Casey*. This research will inform amicus briefs that we are planning to file in the next series of cases on abortion regulation, which will likely be heard by the Supreme Court in the next year or two.

□ NAACP v. Horne: Working with a first-year law student, Cilla filed an amicus brief in the Ninth Circuit appeal of the ACLU’s challenge to Arizona’s ban on race and sex selection abortions. These laws are the entry point in a campaign by anti-abortion activists to subject women’s reasons for getting abortions to legal scrutiny, to end what they call “abortion on demand.” Clothed in the language of anti-discrimination, these laws are enacted based on unfounded assertions that black women have a higher rate of abortion because they are “de-selecting” their race, and that Asian women in the U.S. have sex-selective abortions.[5] The plaintiffs, members of the local NAACP and an Asian women’s advocacy group, alleged that the law stigmatizes them and their reasons for obtaining abortions, and subjects their

reasons for obtaining abortions—*reasons that must be reported to the State*—to increased scrutiny based on their race.

The trial court dismissed the case for lack of standing, holding that claims of harm from the racist justifications for the law were not enough to establish standing in the absence of allegations that the law would actually prevent the plaintiffs from obtaining abortions. Our brief made two points:

□ First, we argued that a primary purpose of the Equal Protection Clause is to protect against the stigma caused by discriminatory treatment, often called “stigmatic injury,” and that this injury is cognizable absent denial of a material benefit under both Equal Protection Clause and Establishment Clause jurisprudence.

□ Second, we argued that the trial court misinterpreted the Supreme Court’s requirement that plaintiffs “allege a stigmatic injury suffered *as a direct result of having been denied equal treatment*,” *Allen v. Wright*, 468 U.S. 737, 755 (1984) (emphasis added). Plaintiffs do not have to allege they will be denied abortions under the law. It is enough to allege that the Plaintiffs’ injury is a direct result of having been denied equal treatment because the law subjects their reasons for obtaining abortions to increased scrutiny based on their race.

□ *M.C. v. Aaronson*: Cilla also worked with a second-year law student on an amicus brief filed on behalf of PSRJ and additional constitutional scholars appealing the denial of a motion to dismiss in a case brought by a boy who was born intersex. The boy, M.C., alleges that his procreative abilities were destroyed and his bodily integrity denied by South Carolina physicians and the Department of Social Services in an operation on his genitalia designed to make him “female.” Our brief argued that the right to procreation is clearly established, thus supporting the trial court’s denial of a motion to dismiss based on qualified immunity of the state actors.

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[1] 62 Drake Law Review --- (forthcoming 2014), *available* at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2306691](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2306691)

[2] *Id.* at 65.

[3] *Id.*

[4] *Id.*

[5] The Arizona Legislature enacted the law based on two claims: 1) that the higher than average rate of abortions obtained by African-American women indicates that these women are “de-selecting” their race, having abortions out of some kind of racial self-hatred; and 2) that the preference for sons in China and India under vastly different social conditions will lead Asian women who come to the United States to obtain sex-selective abortions here, even though evidence does not bear this out.



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 was hosted by the Media Freedom & Information Access clinic and the Information Society Project at Yale Law School.



# Yale Law School

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## 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.

### COMPLETED PROJECTS:

#### *Detention Report:*

In 2013-14, VLP directed, produced, filmed, and edited this documentary short co-production with Human Rights First. The thirty-two-minute film tells the intimate personal stories of immigrants whose lives and families were thrown into turmoil when they were arrested by I.C.E. and placed in immigration detention.

Human Rights First will distribute this film as an outreach tool for high-impact advocacy to reform the U.S. immigration detention system.

The film has not yet been distributed formally, but you can watch the completed product here: <https://vimeo.com/96537706> (pw:

"watch"). This link should not be widely circulated until after HRF launches their release.

### *The Worst of the Worst:*

In 2013-14, VLP continued to distribute this film through festival and educational circuits. As of July 2014, the 30-minute film is available for free-access streaming on VLP's website.

## **FULBRIGHT FILMMAKER-IN-RESIDENCE:**

VLP founder Rebecca Wexler initiated a Fulbright Filmmaker-in-Residence program to bring leading international documentary filmmakers from around the globe to Yale Law School to work with VLP students. VLP's first Fulbright Filmmaker-in-Residence, Dulhan Sanjeewa, arrived from Sri Lanka to teach VLP students for four months during the spring of 2014. Dulhan is a mid-career documentary filmmaker from Sri Lanka who left national broadcast media to focus on social justice filmmaking during Sri Lanka's thirty-year ethnic and religious civil war.

Dulhan provided a perspective on media activism in developing countries, media as a tool for post-war reconciliation in ethnic conflict, and the ecosystem of media production under circumstances of extreme state surveillance and censorship. Dulhan also taught lighting, sound, camera work, editing, color correction, audio mixing, and graphics to VLP students. He also traveled with students on shoots and provided post-production services for *Detention Report*.

## **I PRESS:**

The Yale Daily News published the following article about VLP's work: <http://yaledailynews.com/blog/2013/11/18/law---students---advocate---through---film/>

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# Harvard-MIT-Yale-Columbia Cyberscholar Working Group

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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.

**Wednesday, June 11, 2014 at 4:00pm**  
**Yale Law School**

(1) Five Algorithmic Cultures and Their Ontologies: A Performative Critique. Esteve Sanz. ISP, Yale Law School.

(2) Social Patterns of Digital Thanks, Acknowledgment, and Attribution. Nathan Matias. Media Lab, MIT.

(3) What Drives IP without IP? A Study of the Online Adult Entertainment Industry. Kate Darling. Media Lab, MIT.

**Monday, April 28, 2014 at 6:00pm**  
**MIT Center for Civic Media**

(1) IANA Transfer: To fear or not to fear. Pranesh Prakash. ISP, Yale Law School.

(2) The impacts and ethics of open data standards. Tim Davies. Center for Civic Media. MIT.

**Thursday, March 27, 2014 at 6:00pm**  
**Berkman Center for Internet & Society**

(1) Any Colour You Like: The History (and Future?) of Internet Security Policy. Axel Arnabak. Berkman Center. Harvard University

(2) Local Commercialization Incentives. Camilla Hrdy. ISP, Yale Law School.

(3) Promise Tracker. Heather Craig. Center for Civic Media, MIT.

**February 21, 2014 at 4:00PM**

**Columbia University School of International and Public Affairs,  
Columbia University**

(1) Old Ideas: BBSs and the Emergence of Online Communities in India. Ramesh Subramanian. ISP, Yale Law School.

(2) Rethinking Technology-Neutral Laws: A Case Study in Copyright. Brad A. Greenberg. Center for Law, Media and the Arts, Columbia Law School.

(3) Lawmaking under Duress: The Curious Case of Privacy as a Positive Externality of Techno-utopianism. Malavika Jayaram. Berkman Center, Harvard University.

**January 29, 2014 at 6:00PM**

**Yale Law School**

(1) Copyright License Enforcement through the Contract Lens. BJ Ard. ISP, Yale Law School.

(2) Traditional Knowledge, Genetic Resources and Intellectual Property Rights: An Agenda for Global Justice in the context of Nagoya Protocol. Pushpa Kumar Lakshmanan. Berkman Center. Harvard University.

(3) Copyright and Data-sharing Policies and the Market for Cartographic Information. Abhishek Nagaraj . Sloan School of Management, MIT.

**December 12, 2013 at 6:00PM**  
**MIT**

(1) Lines of Control: Networks of Imperialism and Independence in India (1840-1947). Colin Agur. [Columbia Graduate School of Journalism](#), Columbia University.

(2) Big Data Dramas in the 1960s and 1970s. Julia Fleischhack. Science, Technology, and Society Program, MIT.

(3) Biometrics or Bust - India's Identity Crisis. Malavika Jayaram. Berkman Center. Harvard University.

**October 24, 2013 at 6:00PM**  
**Berkman Center for Internet & Society**

(1) Cyber-Attacking Al Qaeda and the First Amendment's Right to Listen. Sam Kleiner. ISP, Yale Law School.

(2) Mesh networking: analysing the trade-off between decentralisation and control. Primavera De Filippi. Berkman Center, Harvard University.

(3) Carceral Feminist Technologies & the Automated Detection of Child Pornography. Mitali Thakor. Science, Technology, & Society Program, MIT.

# **CLINICAL ACTIVITIES**

# Media Freedom and Information Access Clinic

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The Media Freedom and Information Access Clinic (MFIA) is a law school clinic dedicated to increasing government transparency, defending the essential work of news gatherers, and protecting freedom of expression through impact litigation, direct legal services, and policy work.

The clinic was established in 2009 by a group of Yale Law School students and, since then, has provided pro bono representation to clients on a diverse array of matters touching on issues of transparency, free speech, and press freedom. Our clients include independent journalists, news organizations, public interest and advocacy organizations, activists, researchers, and others. Our practice is focused in the state and federal courts of Connecticut and New York, although the clinic has represented clients in many other parts of the country as well.

MFIA's docket of cases remains diverse, but currently has a significant focus on the following four areas:

[Government Operations and Transparency](#): Litigating rights of access to information that improves public understanding of government operations, including law enforcement activities, that promotes affirmative disclosure practices, or that enforces procedures intended to speed the release of information.

[Constitutional Right of Access](#): Advocating for the First Amendment right of public access to official proceedings, official actions, and related records, including criminal, civil and administrative proceedings.

[National Security and Democratic Oversight](#): Asserting statutory and constitutional rights of access to information and proceedings key to exercising democratic oversight of our nation's security policies and actions.

[Privacy, Infrastructure Freedom, and Free Speech](#): Litigating issues surrounding privacy, surveillance, access to and control over communications infrastructure, and the legal obligations of intermediaries.

The clinic is co-taught by [Jack Balkin](#), Knight Professor of Constitutional Law and the First Amendment; [David Schulz](#), Abrams Visiting Clinical Lecturer at Yale Law School and Partner at Levine, Sullivan, Koch & Schulz LLP; and [Jonathan Manes](#), Abrams Clinical Fellow and Clinical Lecturer in Law. Schulz and Manes serve as supervising attorneys on the clinic's cases.

MFIA is part of the [Abrams Institute for Freedom of Expression](#), which is affiliated with and administered by the [Information Society Project](#) at Yale Law School.

### **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:

Dec 4, 2013

**Media Freedom and Information Access Clinic Seeks Transparency on Trade Negotiations on Behalf of IP-Watch**

Intellectual Property Watch ([IP-Watch](#)), represented by Yale Law School's Media Freedom and Information Access Clinic ([MFIA](#)), continues to press for meaningful disclosure regarding the U.S. side of negotiations over the Trans-Pacific Partnership Agreement (TPP) in the wake of WikiLeaks' recent disclosure of a draft of the plurilateral agreement. IP-Watch is a non-profit independent news service that reports on the interests and behind-the-scenes dynamics that influence the design and implementation of international intellectual property policies.

More than a year ago, IP-Watch, assisted by MFIA, filed a Freedom of Information Act request seeking documents concerning the U.S. negotiating positions and draft texts of TPP provisions on intellectual property rights, as well as communications between the United States Trade Representative (USTR) and industry representatives serving on USTR advisory committees. The TPP agreement could have profound effects on the rights of people here and abroad to use and benefit from a balanced system of intellectual property law, as highlighted in a [series](#) of [articles](#) recently published by Margot Kaminski '10, Executive Director of Yale Law School's Information Society Project and co-founder of the MFIA clinic.

Joshua Weinger '14, a member of the MFIA clinic, observed that the TPP has been negotiated in unprecedented secrecy, and the public has been almost entirely shut out of the process. "Even while the public and independent experts have kept almost entirely in the dark, the USTR has shared its negotiating positions with foreign governments and also with representatives from industries that have a financial stake in the negotiations," said Weinger. "Through the FOIA request, we hope to provide much-needed transparency that will inform the public and allow meaningful engagement with the USTR about the TPP."

Although USTR has refused to disclose most of the information sought, IP-Watch succeeded, after more than a year of delay, in obtaining disclosure of a small number of e-mails that, while containing little of substance, do demonstrate a close relationship between the USTR negotiators and industry groups. These emails were the subject of recent reports by [Knowledge Ecology International](#) and the [Washington Post](#).

IP-Watch filed an appeal in August of this year contesting the USTR's refusal to disclose the vast majority of requested documents, including any documents related to the substance of the communications between the USTR and industry representatives, and any documents reflecting the positions that the United States has taken in formal negotiations. More than three months later, well past the deadline imposed by law, USTR has failed to issue a response.

Jonathan Manes '08, Abrams Clinical Fellow and Clinical Lecturer with the MFIA Clinic, said that MFIA was pleased to assist IP-Watch's investigative efforts regarding the TPP. "The public has a right to know what legal rules the government is advocating for in international negotiations, and to what extent its positions have been influenced by interested parties granted special access to the government's senior negotiators," he said. "The public should not have to rely on unauthorized leaks to learn what the government is doing in its name."

The Media Freedom and Information Access Clinic at Yale Law School works to support robust investigative journalism and to promote the public's right of access of information in defense of democracy.

# **COURSES**

# INFORMATION SOCIETY PROJECT

## COURSES AND READING GROUPS

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### Related Courses

Fall 2013, Spring 2014 **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 2013**  
Patent Law From the Law-and-Economics Perspective

**Spring 2014**  
Media Law & Policy  
Legal Scholarship in the Information Society