JOURNAL OF PROPERTY LAW FALL SYMPOSIUM

DRAWING THE LINE: WHO REALLY OWNS INTELLECTUAL PROPERTY?

FRIDAY OCTOBER 6, 2023

9:00 AM	WELCOME
9:15 AM	PANEL ONE
10:30 AM	SHORT BREAK
10:45 AM	PANEL ONE AUTHOR RESPONSE AND Q&A
12:00 PM	LUNCH
12:45 PM	PANEL TWO
1:45 PM	SHORT BREAK
2:00 PM	PANEL TWO AUTHOR RESPONSE AND Q&A
3:30 PM	CLOSING

THE GENOME DEFENSE

Jorge Contreras
Author

Ana Santos
Rutschman

Arti Rai

Patti Zettler

Dave
Fagundes

Jim Farrington

INTELLECTUAL PROPERTY AND IMMORALITY

Ned Snow
Author

Chris Cotropia

David Taylor

Cathay Smith

Saurabh Vishnubhakat

Maggie Chon

Jorge Contreras

JAMES T. JENSEN ENDOWED PROFESSOR FOR TRANSACTIONAL LAW AT THE UNIVERSITY OF UTAH COLLEGE OF LAW

Jorge L. Contreras is the James T. Jensen Endowed Professor for Transactional Law and Director of the Program on Intellectual Property and Technology Law. He teaches and researches in the areas of intellectual property, property law, technical standardization, antitrust and science policy. In 2020 he received the University of Utah's Distinguished Research Award and is an elected member of the American Law Institute. He has testified before the U.S. Senate Subcommittee on Intellectual Property, and was awarded the Rossman Memorial Award by the Patent & Trademark Office Society in 2022.

Professor Contreras has written or edited twelve books and published more than 150 scholarly articles and book chapters. His most recent book, The Genome Defense: Inside the Epic Legal Battle to Determine Who Owns Your DNA (NY: Hachette/Algonquin, 2021), has been praised by the NY Times, Wall St. Journal, Nature and numerous other outlets, and was named "Best Patent Law Book of the Year" by the international IPKat blog. His scholarly articles have appeared in leading scientific, legal and policy journals including Science, Nature, NYU Law Review, Georgetown Law Journal, Iowa Law Review and Antitrust Law Journal. He has been quoted by media outlets around the world including the New York Times, Wall Street Journal, Economist, Bloomberg, Washington Post, Korea Times and has been featured on C-SPAN, NPR, PRI and BBC shows and a range of podcasts and online news programs.

Professor Contreras currently serves Co-Chair of the Interdisciplinary Division of the ABA's Section of Science & Technology Law and a member of the Advisory Board of the American Antitrust Institute. He has previously served as Co-Chair of the National Conference of Lawyers and Scientists, a member of the National Academy of Sciences (NAS) Committee on Intellectual Property Management in Standard-Setting Processes, the National Institutes of Health (NIH) Council of Councils, the Advisory Council of NIH's National Center for the Advancement of Translational Sciences (NCATS), the National Advisory Council for Human Genome Research, and the Intellectual Property Rights Policy Committee of the American National Standards Institute (ANSI). In 2021-22 he served as Chair of the Art Law Section of the Association of American Law Schools (AALS).

Professor Contreras has previously taught at American University Washington College of Law and Washington University in St. Louis. Prior to entering academia he was a partner at the international law firm Wilmer Cutler Pickering Hale and Dorr LLP, where he practiced transactional and intellectual property law in Boston, London and Washington DC. He is a cum laude graduate of Harvard Law School (JD) and Rice University (BA, BSEE) and clerked for Chief Justice Thomas R. Philips of the Texas Supreme Court.

Dave Fagundes

BAKER BOTTS LLP PROFESSOR OF LAW AND ASSISTANT DEAN FOR FACULTY DEVELOPMENT AT THE UNIVERSITY OF HOUSTON LAW CENTER

Dave Fagundes writes and teaches about property, including copyright, real estate, and wills and trusts. He joined the University of Houston Law Center faculty in fall 2016, and was appointed the Baker Botts LLP Professor of Law in 2018. He also serves as UHLC's research dean.

Professor Fagundes began his teaching career at Southwestern Law School in Los Angeles, California, where he taught from 2007 through 2016. Prior to entering academia, he worked as a Bigelow Fellow and Lecturer in Law at the University of Chicago Law School, an associate at the Washington, D.C. office of Jenner & Block, LLP, and a clerk to Judge David S. Tatel of the U.S. Court of Appeals for the D.C. Circuit.

Professor Fagundes' most recent and forthcoming scholarship focuses on property's abandonment doctrine, the Second Amendment status of municipal corporations, and the intersection of copyright and administrative law. His articles have appeared in the Cornell Law Review, the Northwestern University Law Review, the Texas Law Review, and the Vanderbilt Law Review, among others. His work has been selected for presentation at leading national venues including the Stanford/Yale Junior Faculty Forum and the plenary session of the IP Scholars' Conference (on two occasions), and has been showcased four times in the Journal of Things We Like Lots (JOTWELL).

Professor Fagundes was named the UHLC Order of the Barons Professor of the Year in 2020 and won the University of Houston Teaching Excellence Award in 2023. He was elected to the American Law Institute in July 2020.

Jim Farrington

ADJUNCT PROFESSOR OF LAW AT THE UNIVERSITY OF NOTRE DAME SCHOOL OF LAW

Jim Farrington teaches Licensing Transactions and Transactions Practice at the Notre Dame Law School and IP and Business Law at the ESTEEM Program (a master's degree entrepreneurship program for STEM majors). He is a retired partner at Wiggin and Dana, a 150-lawyer firm with offices in Connecticut, New York City, Philadelphia and Washington D.C. His practice included commercial business transactions, especially acquisitions, joint ventures, licensing, and other technology transfer transactions for primarily biotech, pharmaceutical, and medical device companies. A large portion of his clients were based in Scandinavia.

After graduating with a chemical engineering degree from the University of Notre Dame, Farrington worked as an engineering and product manager for nearly nine years in the air pollution control field. He received his law degree with high honors from Quinnipiac University School of Law. Before joining Wiggin and Dana, Farrington was a partner in the New York City office of Mannheimer Swartling, Sweden's largest law firm.

For each of the last several years before his retirement, he was recognized by national and international organizations for his life science transactions expertise, including PLC/Global Counsel, Chambers Europe, The Best Lawyers in America for Biotechnology Law, and as a "Life Science Star" for mergers and acquisitions and licensing and collaboration by LMG Life Sciences, a Euromoney publication. LMG honored him with its Hall of Fame award for his lifetime achievement in life science transactions.

Arti Rai

ELVIN R. LATTY PROFESSOR OF LAW AND
FACULTY DIRECTOR, THE CENTER FOR
INNOVATION POLICY AT DUKE LAW

Rai's extensive research on these subjects has been funded by NIH, NSF, Arnold Ventures, the Kauffman Foundation, the Greenwall Foundation, and the Woodrow Wilson Center. Her numerous publications have appeared in both peer-reviewed journals and law reviews. Peer-reviewed journals include Science, the New England Journal of Medicine, JAMA, the Journal of Legal Studies, Nature Biotechnology, and the Journal of Law and the Biosciences.

From March to December 2021, Rai served as Senior Advisor on innovation law and policy issues to the Department of Commerce's Office of General Counsel. She also regularly advises other federal and state agencies as well as Congress on these issues. She is a member of multiple distinguished councils, including the National Academies' Forum on Drug Discovery, Development, and Translation, the Polaris Advisory Council to the Government Accountability Office, and the American Law Institute. She has also served as a member of the National Advisory Council for Human Genome Research, as a public member of the Administrative Conference of the United States, and on numerous National Academies committees.

From 2009-2010, Rai headed the Office of Policy and International Affairs at the U.S. Patent and Trademark Office (USPTO). In that capacity, she led policy analysis of the patent reform legislation that ultimately became the America Invents Act and worked to establish the USPTO's Office of the Chief Economist. Prior to entering academia, Rai clerked in the Northern District of California and was a litigator at Jenner & Block and the Department of Justice.

Rai graduated from Harvard College, magna cum laude, with a degree in biochemistry and history (history and science), attended Harvard Medical School for the 1987-1988 academic year, and received her J.D., cum laude, from Harvard Law School in 1991.

Ana Santos Rutschman

PROFESSOR OF LAW AT VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW

Ana Santos Rutschman is Professor of Law at Villanova University Charles Widger School of Law, where she teaches and researches topics related to health law, intellectual property, innovation in the life sciences, and law and technology. She is a nationally and internationally recognized expert on vaccine law and policy, the regulation of emerging health technologies, and access to medicines.

Professor Rutschman's work has been recognized by numerous institutions, including the American Society of Law Medicine & Ethics, which named her a Health Law Scholar in 2018 and Bio Intellectual Property Scholar in 2017. In 2018, she was also named a Wiet Life Sciences Law Scholar by the Beazley Institute for Health Law and Policy at Loyola University Chicago. In 2022, the Boston Congress of Public Health selected her as one of the inaugural recipients of a 40 Under 40 Public Health Catalyst Award for her work on vaccine law and policy.

Professor Rutschman's book, Vaccines as Technology: Innovation, Barriers and the Public Health, was published in 2022 by Cambridge University Press. Her legal scholarship has appeared or is forthcoming in UCLA Law Review, Emory Law Journal, Indiana Law Journal, UC Davis Law Review, Arizona Law Review, Yale Law Journal Forum, Harvard Public Health Review and Vanderbilt Journal of Transnational Law, among several others. Her peer-reviewed work has appeared in Nature Biotechnology, Vaccine, Emerging Infectious Diseases and American Journal of Infection Control, among others. Her commentary pieces have been published by Health Affairs Blog, Bill of Health, Saint Louis Post-Dispatch, the Huffington Post and The Conversation, and republished in Scientific American, Newsweek Japan and numerous U.S. newspapers.

Before joining Villanova Law in 2022, Professor Rutschman taught in the health law program at Saint Louis University School of Law (2018-2022) and served as the inaugural Jaharis Fellow in Health Law and Intellectual Property at DePaul University College of Law in Chicago (2016-2018). Professor Rutschman has also consulted for the World Health Organization in (2022 and 2015-2016) on matters related to the development of drugs and vaccines against COVID-19, Zika and Ebola.

Patti Zettler

JOHN W. BRICKER PROFESSOR OF LAW AT THE OHIO STATE UNIVERSITY MORITZ COLLEGE OF LAW

Patricia J. Zettler is a nationally-recognized expert on the U.S. Food and Drug Administration (FDA) and food and drug law. She serves as the John W. Bricker Professor of Law at The Ohio State University Moritz College of Law, a member of the Drug Enforcement & Policy Center housed at the College of Law, and a member of the Cancer Control Program at The Ohio State University Comprehensive Cancer Center.

Professor Zettler is a prolific scholar with over 50 articles in scientific journals and traditional law reviews, including the New England Journal of Medicine, JAMA, Science, Indiana Law Journal, Boston University Law Review, and NYU Law Review. Her work has covered various topics including stem cell interventions, opioids, cannabis products, tobacco and nicotine products, COVID-19 countermeasures, non-trial access to investigational drugs, and citizen science. She also is a co-author of the 5th edition of Food and Drug Law: Cases and Materials (with Peter Barton Hutt, the late Richard A. Merrill, Lewis A. Grossman, Nathan Cortez, and Erika Lietzan).

Zettler's research has won multiple prizes, including the 2023 Early Career Distinguished Scholar Award at The Ohio State University and the 2015 Health Law Scholar Award from the American Society of Law, Medicine, and Ethics. Her work has been cited by courts and news sources and presented to national and international academic and policymaking audiences. She also has served as a subject matter expert for FDA and the World Health Organization, and has been widely quoted on FDA matters in the media.

Beyond her scholarship, Professor Zettler currently serves on the Food and Drug Law Institute's (FDLI) Board of Directors, the National Academies of Sciences, Engineering, and Medicine's (NASEM) Health Sciences Policy Board, and the Ohio State Bar Association's Administrative Agency Law Specialty Board. She chairs the International Society of Cell & Gene Therapy's Committee on the Ethics of Cell and Gene Therapy, also chairing its subcommittee on expanded access to investigational cell and gene interventions. Previously, among other things, she has served on NASEM's Committee on Reviewing the Public Health Emergency Medical Countermeasures Enterprise (PHEMCE), FDLI's Black Lives Matter Advisory Group, the International Society for Stem Cell Research's Task Force to Revise Guidelines, and the Food and Drug Law Journal's editorial advisory board, as well as serving as a consultant to NASEM's Committee on Pain Management and Regulatory Strategies to Address Prescription Opioid Abuse.

Professor Zettler teaches courses related to administrative law, tort law, FDA law, and public health. Before her academic career, she served as an associate chief counsel in FDA's Office of the Chief Counsel, where she advised FDA and the Department of Health and Human Services on a wide range of issues.

Professor Zettler graduated with distinction from Stanford Law School. She received a BA in psychology, with distinction and departmental honors, from Stanford University, where she played on the varsity lacrosse team.

Ned Snow

ASSOCIATE DEAN FOR FACULTY DEVELOPMENT, RAY TAYLOR FAIR PROFESSOR OF LAW AT THE UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW

Professor Ned Snow teaches Intellectual Property, Copyright, Trademark, and Property. His scholarship focuses on the intersection of morality, intellectual property, and the Constitution. An author of more than twenty law review articles, he has recently published an academic book with Oxford University Press, Intellectual Property and Immorality. He currently serves as Associate Dean for Faculty Development and Scholarship.

Prior to joining the University of South Carolina law faculty, Professor Snow held academic appointments at the University of Arkansas School of Law and Brigham Young University Law School. He practiced law in the Dallas office of Baker Botts LLP, and following law school, he clerked for Judge Edith Brown Clement of the U.S. Court of Appeals for the Fifth Circuit. Professor Snow earned his law degree from Harvard Law School and his undergraduate degree from Brigham Young University.

Maggie Chon

FACULTY CO-DIRECTOR OF THE TECHNOLOGY, INNOVATION LAW, AND ETHICS PROGRAM AT SEATTLE UNIVERSITY SCHOOL OF LAW

Margaret Chon is faculty co-director of the Technology, Innovation Law, and Ethics Program and Donald & Lynda Horowitz Endowed Chair for the Pursuit of Justice at Seattle University School of Law. Author of numerous articles, book chapters and review essays on knowledge governance through intellectual property, she focuses mainly on the role of global intellectual property in human and sustainable development. Her co-edited books include IMPROVING INTELLECTUAL PROPERTY: A GLOBAL PROJECT (with Susy Frankel, Graeme Dinwoodie, Barbara Lauriat, and Jens Schovsbo 2023) and the CAMBRIDGE HANDBOOK OF PUBLIC-PRIVATE PARTNERSHIPS, INTELLECTUAL PROPERTY, AND SUSTAINABLE DEVELOPMENT (with Pedro Roffe and Ahmed Abdel-Latif, 2018). She is an alumna of the University of Michigan (M.H.S.A. and J.D.) and Cornell University (A.B.), and an elected member of the American Law Institute and the American Bar Foundation.

Chris Cotropia

DENNIS I. BELCHER PROFESSOR OF LAW AT THE
UNIVERSITY OF RICHMOND SCHOOL OF LAW

Chris Cotropia is a professor at the University of Richmond and writes in the areas of empirical legal studies, patent law, and intellectual property. He is the author of numerous book chapters, amicus briefs, and law review articles on these subjects, and his scholarship appears in a variety of legal and economic journals.

Cathay Smith

PROFESSOR OF LAW AT THE UNIVERSITY OF
MONTANA ALEXANDER BLEWETT III SCHOOL OF LAW

Professor Smith teaches courses on intellectual property law, property law, and art and cultural property law. Her scholarship focuses on copyright, trademark, and art law and policy, and frequently explores the balance between copyright and free speech, emerging IP issues in the digital era, and the law's influence on creativity, innovation, culture and society. She served as co-Acting Dean of the Law School during AY 2021-22, and as the 2022 Chair and 2021 Chair-elect of the AALS Section on Intellectual Property. She co-created and co-organizes IP Day in Montana, a full-day conference featuring speakers, panels, and workshops on intellectual property issues. She recently returned from England where she completed a year as a Visiting Research Fellow at the Oxford Intellectual Property Research Centre at the University of Oxford.

Before joining the faculty at the Alexander Blewett III School of Law, Professor Smith taught at the University of Denver Sturm College of Law as a teaching fellow, and practiced as an intellectual property attorney at Katten Law in Chicago.

David Taylor

CO-DIRECTOR OF THE TSAI CENTER FOR LAW, SCIENCE AND INNOVATION AND PROFESSOR OF LAW AT THE SMU DEDMAN SCHOOL OF LAW

Professor Taylor earned his bachelor of science, magna cum laude, in mechanical engineering from Texas A&M University and his juris doctor, cum laude, from Harvard Law School. Prior to law school, Professor Taylor worked as an applications engineer at National Instruments Corporation in Austin, Texas. While in law school, he served as an extern for the U.S. Attorney's Office in Boston, as a member of both the Harvard Journal of Law & Technology and the Harvard Journal of Law & Public Policy, and as President of the law school's Texas Club.

After graduating from law school, Professor Taylor clerked for the Honorable Sharon Prost of the U.S. Court of Appeals for the Federal Circuit. Professor Taylor also worked for seven years at the law firm of Baker Botts LLP in its Dallas office. While at Baker Botts, Professor Taylor engaged in patent litigation in various district courts and at the U.S. Court of Appeals for the Federal Circuit. His litigation experience includes both bench and jury trials. A registered patent attorney, he also gained significant experience in the fields of intellectual property licensing and patent prosecution. During his time in practice he assisted with several advanced patent law courses at SMU Dedman School of Law, including Patent Litigation, Intellectual Property Licensing, and Patent Prosecution, and successfully represented clients in pro bono matters, including before the U.S. Court of Veterans Appeals.

At SMU, Professor Taylor teaches in the areas of contracts and patent law. His scholarship focuses on patent law, patent policy, patent litigation, and civil procedure. Professor Taylor has published articles in various journals, including the Connecticut Law Review, Georgia Law Review, New York University Law Review, and in an assortment of intellectual property specialty journals. His publications have been cited by the U.S. Court of Appeals for the Federal Circuit and various district courts.

Saurabh Vishnubhakat

DIRECTOR, INTELLECTUAL PROPERTY AND INFORMATION LAW PROGRAM AND PROFESSOR OF LAW AT THE BENJAMIN N. CARDOZO SCHOOL OF LAW

Saurabh Vishnubhakat is a Professor of Law and Director of the Intellectual Property and Information Law Program at Cardozo Law. He is also a Research Fellow at the Duke Law Center for Innovation Policy and a Senior Scholar at the George Mason University Center for IP and Innovation Policy.

Professor Vishnubhakat writes and teaches in intellectual property, administrative law and federal litigation, especially from an empirical perspective. His research explores the interaction of the U.S. intellectual property system with federal courts and agencies and with markets for technology. His work has been cited in federal judicial opinions, agency regulations, and over thirty appellate briefs in the Supreme Court and Federal Circuit.

Before joining Cardozo, Professor Vishnubhakat held joint appointments as a Professor of Law and Professor of Engineering at Texas A&M University. He began his career in the United States Patent and Trademark Office, serving as principal legal advisor to that agency's first two chief economists. He was also a faculty fellow at Duke Law School, where he co-taught patent law, and was a postdoctoral associate at the Duke Center for Public Genomics, where he researched law and policy issues surrounding innovation in genetics and biomedicine.

The Genome Defense

By: Jorge Contreras

"Drawing the Line: Who Really Owns Intellectual Property?"

Journal of Property Law Fall 2023 Symposium

In this riveting, behind-the-scenes courtroom drama, a brilliant legal team battles corporate greed and government overreach for our fundamental right to control our genes.

When attorney Chris Hansen learned that the U.S. government was issuing patents for human genes to biotech companies, his first thought was, How can a corporation own what makes us who we are? Then he discovered that women were being charged exorbitant fees to test for hereditary breast and ovarian cancers, tests they desperately needed—all because Myriad Genetics had patented the famous BRCA genes. So he sued them.

Jorge L. Contreras, one of the nation's foremost authorities on human genetics law, has devoted years to investigating the groundbreaking civil rights case known as AMP v. Myriad. In The Genome Defense Contreras gives us the view from inside as Hansen and his team of ACLU lawyers, along with a committed group of activists, scientists, and physicians, take their one-in-a-million case all the way to the U.S. Supreme Court. Contreras interviewed more than a hundred key players involved in all aspects of the case—from judges and policy makers to ethicists and genetic counselors, as well as cancer survivors and those whose lives would be impacted by the decision—expertly weaving together their stories into a fascinating narrative of this pivotal moment in history.

The Genome Defense is a powerful and compelling story about how society must balance scientific discovery with corporate profits and the rights of all people.

Intellectual Property and Immorality

By: Ned Snow

"Drawing the Line: Who Really Owns Intellectual Property?"

Journal of Property Law Fall 2023 Symposium

Should a machine that emits harmful levels of pollution receive patent protection? Should pornography receive copyright protection? This book argues that certain intellectual creations should not receive patent or copyright protection on the grounds that those works are harmful to society. The book posits that the theories of intellectual property and the Intellectual Property Clause of the U.S. Constitution suggest this conclusion. It also considers several counterarguments: in particular, that denying protection might increase the output of objectionable works, that other laws should address moral problems, and that intellectual property functions better under a laissez–faire approach. Despite these counterarguments, the book contends that law should never encourage or reward harmful behavior. This simple principle implies that courts should exercise their equitable powers to deny enforcement of intellectual property for works involving unlawful conduct. It implies that courts should deny protection for works that clearly fall outside the Intellectual Property Clause's scope of protectable works. And it implies that Congress should consider denying protection for works that pose clear harms to society. The book also addresses the intersection between denying intellectual property protection and maintaining free speech protection. In that regard, the book recognizes that the Free Speech Clause severely limits Congress's discretionary authority to deny copyright protection for expression that it deems immoral. The book concludes that courts, Congress, and government agencies should exercise limited discretion in deciding whether certain intellectual works are morally eligible for intellectual property protection.