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Academic Employment

DUKE UNIVERSITY SCHOOL OF LAW

Edward & Ellen Schwarzman Distinguished Professor, 2022—present
Courses: *Copyright; Torts; Design Law*

CARDOZO LAW SCHOOL, YESHIVA UNIVERSITY

Professor, 2015—2022
Associate Dean for Faculty Development, 2017—2022
Director, Intellectual Property & Information Law Program, 2016—2022
Visiting Associate Professor, Spring 2014
Courses: *Torts; Copyright; Design Law; Creativity, Innovation & IP; Law & Psychology; IP Colloquium*

CHICAGO-KENT COLLEGE OF LAW, ILLINOIS INSTITUTE OF TECHNOLOGY

Co-Director, Center for Empirical Studies of Intellectual Property
Associate Professor with tenure, 2013-2015
Assistant Professor, 2009-2013
Courses: *Torts; Copyright; Law & Human Behavior; Law & Food; IP Colloquium*
Professor of the Year, 2009-10 – Student Bar Assoc.
University Excellence in Teaching Award, 2013 (to one member of the IIT faculty)

UNIVERSITY OF ILLINOIS COLLEGE OF LAW

Visiting Assistant Professor, 2008-2009
Courses: *Law and the Human Sciences; Copyright*

Shorter Teaching

Max Planck Institute for Economics, International Max Planck Research School Summer Program on Uncertainty, *Seminar on Creativity and Innovation*, Jena, Germany, August 2014.

Max Planck Institute for Intellectual Property and Competition Law, International Max Planck Research School for Competition and Innovation, *Seminar on Behavioral Law and Economics of Intellectual Property*, Munich, Germany, July 2013.

Education

UNIVERSITY OF CHICAGO – M.A., History of Culture
Research Fellow, Center for Cognitive and Social Neuroscience

UNIVERSITY OF GEORGIA SCHOOL OF LAW – J.D.

GEORGIA INSTITUTE OF TECHNOLOGY – B.S., Science, Technology and Culture

Publications

Book

HAPPINESS AND THE LAW (Univ. of Chicago Press, 2015) (with John Bronsteen & Jonathan Masur).

Articles

Of Bass Notes and Base Rates: Avoiding Mistaken Inferences About Copying, 61 HOUSTON L. REV. (forthcoming 2023) (with Rebecca Tushnet).

Competition and Congestion in Trademark Law, 102 TEXAS LAW REVIEW (forthcoming 2023) (with Jonathan Masur & Mark McKenna).

Antisocial Innovation, GEORGIA LAW REVIEW (forthcoming 2023) (with Samuel Weinstein).

There's No Such Thing as Independent Creation, and It's a Good Thing, Too, 64 WILLIAM & MARY LAW REVIEW 1617 (2023).

The Price of Fairness, 84 OHIO STATE LAW JOURNAL 1 (2023) (with Daniel Hemel & Eric Talley).

Framing Vaccine Mandates: Messenger and Message Effects, 9 JOURNAL OF LAW AND THE BIOSCIENCES 1 (2022) (with Daniel Hemel).

Pay-to-Playlist: The Commerce of Music Streaming, 12 UC IRVINE LAW REVIEW 805 (2022) (with Kristelia García).

How Many Latours Is Too Many? Measuring Brand Name Congestion in Bordeaux Wine, 16 JOURNAL OF WINE ECONOMICS 419 (2022) (with Jonathan Masur & Ryan Whalen).

Drugs, Patents, and Well-Being, 98 WASHINGTON UNIV. LAW REVIEW 1403 (2021) (with Jonathan Masur).

Disability and Design, 95 NYU LAW REVIEW 952 (2020).

The Design Patent Bar: An Occupational Licensing Failure, 37 CARDOZO ARTS & ENTERTAINMENT LAW JOURNAL 263 (2019) (with Jeanne Curtis).

Intelligent Design, 68 DUKE LAW JOURNAL 75 (2018) (with Mark A. Lemley & Jonathan S. Masur).

Analyzing the Law's Effects on Human Well-Being: A Comparative Perspective, 13 JOURNAL OF COMPARATIVE LAW 2 (2018) (with John Bronsteen & Jonathan S. Masur).

Functionality Screens, 103 VIRGINIA LAW REVIEW 1293 (2017) (with Mark Lemley).

The Nature of Sequential Innovation, 59 WILLIAM & MARY LAW REVIEW 1 (2017) (with Stefan Bechtold & Christopher Sprigman).

Fashion's Function in Intellectual Property Law, 93 NOTRE DAME LAW REVIEW 51 (2017) (with Jeanne Fromer).

Testing Tarnishment in Trademark and Copyright Law: The Effect of Pornographic Versions of Protected Marks and Works, 94 WASHINGTON UNIV. LAW REVIEW 341 (2017) (with Paul Heald & Wen Bu).

A Theory of Copyright Authorship, 102 VIRGINIA LAW REVIEW 1229 (2016).

Authorship and the Boundaries of Copyright: Ideas, Expressions, and Functions in Yoga, Choreography, and Other Works, 39 COLUMBIA JOURNAL OF LAW & THE ARTS 421 (2016).

The Moral Psychology of Copyright Infringement, 100 MINNESOTA LAW REVIEW 2433 (2016) (with David Fagundes).

Innovation Heuristics: Experiments on Sequential Innovation in Intellectual Property, 91 INDIANA LAW JOURNAL 1251 (2016) (with Stefan Bechtold and Christopher Sprigman).

Experimental Tests of Intellectual Property Law's Creativity Thresholds, 92 TEXAS LAW REVIEW 1921 (2014) (with Zach Burns, Jeanne Fromer and Christopher Sprigman).

Innovation and Incarceration: An Economic Analysis of Criminal Intellectual Property Law, 87 SOUTHERN CALIFORNIA LAW REVIEW 276 (2014) (with Jonathan Masur).

What's a Name Worth?: Valuing Attribution in Intellectual Property Law, 93 BOSTON UNIV. LAW REVIEW 1389 (2013) (with Christopher Sprigman and Zachary Burns).

Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension, 28 BERKELEY TECHNOLOGY LAW JOURNAL 1 (2013) (with Paul Heald).

Well-Being Analysis vs. Cost-Benefit Analysis, 62 DUKE LAW JOURNAL 1603 (2013) (with John Bronsteen and Jonathan Masur).

Making Sense of Intellectual Property Law, 97 CORNELL LAW REVIEW 501 (2012).

The Creativity Effect, 78 UNIV. OF CHICAGO LAW REVIEW 31 (2011) (with Christopher Sprigman).

Retribution and the Experience of Punishment, 98 CALIFORNIA LAW REVIEW 1463 (2010) (with John Bronsteen and Jonathan Masur).

Valuing Intellectual Property: An Experiment, 96 CORNELL LAW REVIEW 1 (2010) (with Christopher Sprigman).

Welfare as Happiness, 98 GEORGETOWN LAW JOURNAL 1583 (2010) (with John Bronsteen and Jonathan Masur).

Happiness and Punishment, 76 UNIV. OF CHICAGO LAW REVIEW 1037 (2009) (with John Bronsteen and Jonathan Masur).

Hedonic Adaptation and the Settlement of Civil Lawsuits, 108 COLUMBIA LAW REVIEW 1516 (2008) (with John Bronsteen and Jonathan Masur).

On the Legal Consequences of Sauces: Should Thomas Keller's Recipes be Per Se Copyrightable?, 24 CARDOZO ARTS & ENTERTAINMENT LAW JOURNAL 1121 (2007).

Gaining/Losing Perspective on the Law, or Keeping Digital Evidence in Perspective, 58 UNIV. OF MIAMI LAW REVIEW 609 (2004).

* Reprinted in POPULAR CULTURE AND LAW (Richard K. Sherwin, ed., Ashgate Pub. 2006).

Book Chapters and Other Shorter Works

How Conceptual Art Challenges Copyright's Notions of Authorial Control and Creativity, 43 COLUMBIA JOURNAL OF LAW & THE ARTS 375 (2020).

The Trump Administration's Social Security Rules Will Harm Innovation in the Assistive Technology Industry and People with Disabilities, 2020 CARDOZO LAW REVIEW DE NOVO 92 (with Mariel Talmage).

Preserving Film Preservation from the Right of Publicity, 2018 CARDOZO LAW REVIEW DE NOVO 1 (with Jared Vasconcellos Grubow & Ian J. Postman).

Forgetting Functionality, 166 UNIV. PENNSYLVANIA LAW REVIEW ONLINE 119 (2017) (with Jeanne Fromer).

Intellectual Property Law and the Promotion of Welfare, 1 HANDBOOK ON THE ECONOMICS OF INTELLECTUAL PROPERTY 98 (Benjamin DePoorter & Peter Menell eds., 2019) (with Jonathan Masur).

Experiments on Intellectual Property, 2 HANDBOOK ON THE ECONOMICS OF INTELLECTUAL PROPERTY 579 (Peter Menell & David Schwartz eds., 2019) (with Christopher Sprigman).

Well-Being and Public Policy, OXFORD HANDBOOK OF LAW AND ECONOMICS (Francesco Parisi, ed., 2017) (with John Bronsteen and Jonathan Masur).

Describing the Effect of Adaptation on Settlement, 109 COLUMBIA LAW REVIEW SIDEBAR 21 (2009) (with John Bronsteen and Jonathan Masur).

Op-Eds and Other Writing

How Ed Sheeran's Serenade May Have Swayed the Jury, LAW360 (May 5, 2023).

Spotify's Discovery Mode is Payola, Just Not the Bad Kind, BILLBOARD (June 28, 2021) (with Kristelia García).

Viral Sea Shanties on TikTok Expose America's Broken Copyright System, BUSINESS INSIDER (Jan. 31, 2021).

Cleveland Baseball Team, You're Out of Excuses – Drop Offensive Team Name Now, THE UNDEFEATED (Dec. 21, 2020) (with Natalie Welch).

Sports Teams Were Silent on Indigenous Peoples' Day, INDIAN COUNTRY TODAY (Oct. 16, 2020) (with Natalie Welch).

Teams Must Do More than Ban Native American Headdresses, Offensive Gestures, THE UNDEFEATED (Aug. 27, 2020) (with Natalie Welch).

Fixing the Design Patent Bar: New Opportunities for Federal Lawyers, FEDERAL LAWYER (July/Aug. 2019) (with Jeanne Curtis).

USPTO Should Fix Costly and Biased Design Patent Bar Rules, LAW360 (Oct. 5, 2018) (with Jeanne Curtis).

The Blurred Lines of Copyright Law Are Limiting Musical Creativity, THE RECORDER (May 14, 2018).

Copyright in the Kitchen: Exploring Protection for Recipes and Dishes, LANDSLIDE (2016) (with Jonathan Yellin).

Who Deserves Those 4 Inches of Airplane Seat Space? An Investigation into the Economics of Reclining, SLATE (Sept. 23, 2014) (with Christopher Sprigman).

Grants

Leonardo da Vinci Research Grant, Center for Protection of Intellectual Property – \$10,500. Co-PI with David Schwartz. 2013-2014.

Batten Foundation, UVA Darden School of Business - \$15,000. Co-PI with Christopher Sprigman. 2012-13.

Google Research Award - Experimental Tests of Creativity and Incentives in Intellectual Property, \$69,000. Co-PI with Christopher Sprigman. 2011-12

Google Research Award – Valuing the Public Domain, \$18,900. Co-PI with Paul Heald. 2011-12.

Batten Foundation, UVA Darden School of Business - \$16,000. Co-PI with Christopher Sprigman. 2011-12.

Olin Foundation - \$4,000. Co-PI with Christopher Sprigman. 2010.

Virginia Law Foundation - \$16,7000. Co-PI with Christopher Sprigman. 2009-10.

Selected Presentations

The Puzzle of Firearms Safety Innovation, IPSC, Cardozo, Aug. 2023.

Do Wineries Benefit from Distinctive Names?: Evidence from Bordeaux 2011-22, Assoc. Wine Economists Conf., Stellenbosch, July 2023.

Antisocial Innovation – Univ. of Florida Faculty Workshop, Feb. 2023; ATRIP Conference, plenary presentation, Tokyo Univ., July 2023.

A Bayesian Approach to Independent Creation and Copying – WIPIP, Suffolk Law, Feb. 2023; Houston IPIL Santa Fe Workshop, May 2023.

There's No Such Thing as Independent Creation, and It's a Good Thing, Too – IPSC, Stanford, Aug. 2022.

Screening Meaning – Duke Law School Faculty Workshop, Sept. 2021; NYU Tri-State IP Workshop, Jan. 2022.

Drugs, Patents, and Well-Being – DePaul Health Law Colloquium, Feb. 2020; Univ. of Alabama Law & Economics Colloquium, Mar. 2020; University of Michigan Law School Innovation Colloquium, April 2020; American Law & Economics Conference, Chicago, Oct. 2021.

Price Gouging in a Pandemic – Columbia Law faculty workshop, Nov. 2020; American Law & Economics Conference, Chicago, Oct. 2021.

Pay-to-Playlist – NYU Tri-State IP Workshop, Jan. 2021; Hofstra Law IP Colloquium, Mar. 2021.

Infringement in the Ninth Circuit and Beyond: Safeguarding Innovation and Experimentation in Music – Pepperdine Law Review Symposium, Feb. 2021.

Fixing the Design Patent Muddle – Berkeley Center for Law and Technology, Feb. 2021.

Incentivizing Accessible Design – WIPIP, Univ. of Houston Feb. 2019; IP Scholars Conf. DePaul Law School, Aug. 2019; ETH Zurich/Univ. of Zurich Law and Innovation Colloquium, Sept. 2019; NYU Tri-State IP Workshop, Jan. 2020; Fordham Urban Law Symposium, Feb. 2020.

Intellectual Property and the Promotion of Welfare - ETH Zurich/Univ. of Zurich Law and Innovation Colloquium, Sept. 2019; WIPIP, Santa Clara, Feb. 2020; DePaul Health Law Colloquium, Feb. 2020.

Intelligent Design – Design Law @ NYU, Mar. 2017; Indiana Univ. IP Colloquium, Oct. 2017; UCLA Entertainment, Media & IP Colloquium, Nov. 2017; Harvard Law & Economics Colloquium, Jan. 2018; WIPIP, Case Western Reserve Univ. Feb. 2018; Chicago-Kent Design Law Symposium, Mar. 2018.

Risk, Creativity & IP: An Experimental Approach – WIPIP, Boston Univ., Feb. 2017; Roundtable on Empirical Methods in IP, Apr. 2017.

Functionality Screens – IPSC, Stanford, Aug. 2016; NYU Tri-State IP Workshop, Jan. 2017.

Fashion's Function in IP – Loyola Chicago Faculty Colloquium, Jan. 2017; WIPIP, Boston Univ., Feb. 2017.

Innovate or Borrow: Modeling Sequential Innovation – Soc. for Institutional & Organizational Econ., Paris, June 2016; IPSC, plenary presentation, Stanford, Aug. 2016.

A Theory of Copyright Authorship – Law & Society Conf., Seattle, May 2015; IPSC, DePaul, Aug. 2015; Copyright Outside the Box workshop, Columbia Univ., Oct. 2015; Univ. of Washington Legal Methods Colloquium, Dec. 2015; Tri-State IP Workshop, NYU, Jan. 2016.

Innovation and Intellectual Property: Creativity Experiments – University of Glasgow, CREATE, Public Lecture, Mar. 2015.

Testing Tarnishment in Trademark and Copyright Law – Soc. for Economic Research on Copyright Issues, Glasgow, Sept. 2015; UCLA Entertainment and Media Law Colloquium, Nov. 2015; Ghent University Law & Economics Colloquium, Feb. 2016.

Experiments on Sequential Innovation in IP Law – Soc. for Economic Research on Copyright Issues, Paris, July 2013; Chicago-Kent/USPTO Roundtable on Empirical Scholarship in IP, Sept. 2014; Law and Market Behavior colloquium, Notre Dame, Nov. 2014; Experimental Methods in Law Conference, UCLA, Mar. 2015; AP-LS Conference, San Diego, 2015; BYU Entrepreneurship and Innovation Colloquium, Oct. 2015.

Moral Foundations of Copyright Infringement – Chicago-Kent/USPTO Roundtable on Empirical Scholarship in IP, Oct. 2013; Soc. for Econ. Research on Copyright Issues, Barcelona, July 2014; Univ. of Georgia Faculty Workshop, Oct. 2014; *Campbell @ 21* Conference, Univ. of Washington, Apr. 2015; UCLA Entertainment and Media Law Colloquium, Nov. 2015.

Creativity, Social Norms, and Moral Psychology – Order With or Without Law conference, Univ. of Tulsa, Nov. 2014; Creativity Without Law conference, Case Western Reserve, Nov. 2014.

Panel Discussion on Empirical Studies of Copyright Law Incentives – NYU Conference on Empirical Studies of Intellectual Property, Oct. 2014.

Experimental Tests of Intellectual Property Law's Creativity Thresholds – Conf. on Empirical Legal Studies, Univ. of Pennsylvania, Oct. 2013; Texas Law Review Symposium on Evidence-Based IP, Feb. 2014; Cardozo Faculty Workshop, Feb. 2014; Cornell Law School Faculty Workshop, Mar. 2014.

Innovation and Incarceration: An Economic Analysis of Criminal Intellectual Property Law – NYU IP and Innovation Colloquium, Jan. 2013; Max Planck-ETH Law & Economics of IP and Antitrust Conf., Munich, June 2013; Univ. of Chicago IP Roundtable, Oct. 2013.

Well-Being Analysis vs. Cost-Benefit Analysis – American Law and Economics Assoc. Conf., Stanford Univ., May 2012; Duke University Law Journal Administrative Law Symposium, Feb. 2013; OECD Conf. on New Directions in Welfare Economics, Paris, July 2013.

Valuing Attribution and Publication in Intellectual Property – Property and Psychology Conf., Syracuse Univ., June 2011; Max Planck-ETH Junior IP and Antitrust Scholars Conf., Munich, June 2011; Oxford Univ., Feb. 2012; Cambridge Univ., Jan. 2012; Glasgow Univ. Feb. 2012; Max Planck Institute on Collective Goods, Bonn, Feb. 2012; Intellectual Property Scholars Conf., Stanford, Aug. 2012; Conf. on Empirical Legal Studies, Stanford, Nov. 2012; Hofstra IP Colloquium, Mar. 2013.

Chair and Participant – *Roundtable: Empirical Studies of Intellectual Property Law* – Law & Society Conf., San Francisco, June 2011.

Intellectual Property and the Psychology of Incentives – Law & Society Conf., San Francisco, June 2011.

Making Sense of Intellectual Property – Works In Progress Intellectual Property Conf., Boston Univ., Feb. 2011; Intellectual Property Scholars Conf., DePaul, Aug. 2011; Univ. of North Carolina Faculty Workshop, Sept. 2011.

Retribution and the Experience of Punishment – Junior Criminal Law Professors Conf., Chicago, July 2010.

Participant – *Roundtable: Cost-Benefit Analysis v. Well-Being Analysis* – Law & Society Conf., Chicago, May 2010.

The Creativity Effect – Intellectual Property Scholars Conf., plenary session, Berkeley, Aug. 2010; Symposium on Licensing Intellectual Property, Univ. of Chicago School of Law, June 2010; Law & Society Conf., Chicago, May 2010.

Copyrighting Canapés: What Cooking and Chefs Can Tell Us about Creativity, Authenticity, and Incentives – From Food to Tablet: Food, Law, and Culture Symposium, Univ. of Iowa, Mar. 2010.

Emotion and the Law Roundtable Participant – American Association of Law Schools Annual Conf., New Orleans, January 2010.

Well-Being Analysis – Midwest Law and Economics Conf., Notre Dame, October 2009.

Valuing Intellectual Property: an Experiment (with Christopher Sprigman) – Intellectual Property Scholars Conf., Cardozo Law School, Aug. 2009.

Reason and Emotion in Juror Decision-Making: Perspectives from the Neuroscience of Empathy – Big Ten Aspiring Law Professors Conf., Univ. of Illinois, Aug. 2009; Society for Neuroscience Conf., Chicago, Oct. 2009.

Organizer, Chair, and Discussant – *Happiness and the Law: A Roundtable Discussion* – Law & Society Conf., Denver, CO, May 2009.

Happiness and Punishment – Crime and Punishment Workshop (invited), Univ. of Chicago Law School, Jan. 2009.

Hedonic Adaptation and the Settlement of Civil Lawsuits – Law and Human Behavior Seminar (invited), Temple Univ. School of Law, Sept. 2008; Law & Society Conf., Montreal, May 2008.

Organizer, Chair, and Presenter – two panels on *Food, Law, and Culture* – Law, Culture, and Humanities Conf., Georgetown, March 2007; Law, Culture, and Humanities Conf., UC Berkeley School of Law, March 2008.

Spiritualism, Literary Realism, and Testamentary Law in the Age of Contract – American Society for Legal History Conf., Oct. 2007; Villanova Law, Literature, and Religion Symposium, September 2009; Illinois/ABF Legal History Symposium, Dec. 2009 (invited).

Evidence Law, Witness Memory, and the Pre-History of Forensic Psychology – Human Sciences Workshop, Univ. of Chicago, 2007.

On the Legal Consequences of Sauces – Law, Culture and Humanities Conf., March 2006.

The Eye of Science: Photographic Memory and the Pre-History of Forensic Psychology – Law, Culture, and Humanities Conf., March 2006.

Activities and Service

External

Co-editor, *Intellectual Property: Empirical Studies* eJournal, Social Science Research Network

Editor, *JOTWELL: Intellectual Property*

Organizer, Roundtable on Empirical Methods in Intellectual Property, annual workshop co-sponsored by the U.S. Patent & Trademark Office, Cardozo Law School, and Northwestern Law School.

External Reviewer: *Law and Social Inquiry*, *Law and History Review*, *Journal of Law, Culture, and Humanities*, Cambridge Univ. Press, *Stanford Journal of Law and Technology*, *SCRIPTed Journal*; European Policy for Intellectual Property conference

Internal

Faculty Development Committee, 2017-2021

Communications Committee, 2015-2017

Ad Hoc VAP Appointments Committee, 2016-2017

Adjunct Appointments, 2015-16

Appointments Committee, 2010-11, co-chair 2014-2015

Curriculum Committee, 2012-2015

Student Life Committee, chair 2010-11, 2011-12

Online Scholarship Committee, chair 2009-10, 2010-11