MEDICINE, MUSIC, AND MASCOTS
Furthering Social Justice in the Age of Intellectual Property

THE CENTER FOR CIVIL AND HUMAN RIGHTS
GONZAGA UNIVERSITY SCHOOL OF LAW
Friday, September 20, 2019
As we move further into the information age, the domain of intellectual property (IP) continues to grow exponentially. This domain—which includes algorithms, digital creations, genes, and even living organisms—is a vast economic resource that garners massive earnings for the media, pharmaceutical, agricultural, and academic industries, among others. As social-justice minded lawyers and scholars working within the realm of IP, we have the opportunity and obligation to ask how the resources of IP can be used to advance the wellbeing of our communities, nations, and the world at large. With these concerns in mind, this conference puts IP into conversation with social justice by asking how the areas of patent law, trademark law, and copyright law can better serve the public good in the modern world.

Center for
CIVIL & HUMAN RIGHTS
at Gonzaga Law
SCHEDULE

8:30 - 9:00am
Breakfast in the Barbieri Courtroom

9:00 - 9:30 am
Welcome and introductory remarks by Dean Jacob H. Rooksby and Professor Jason Gillmer

9:30 - 10:00 am
Opening plenary presentation by Professor Lateef Mtima, Howard University

10:00 - 10:15am
Break

10:15 - 11:45 am
“Trademarks, Expressive Speech, and Social Justice,” moderated by Professor Jessica Kiser

12:00 - 1:30 pm
Lunch
12:45-1:30 Keynote address by Professor Madhavi Sunder, Georgetown Law

1:45 - 3:15 pm
“Patents, Public Health, and Social Justice,” moderated by Dean Jacob Rooksby

3:15 - 3:30 pm
Break

3:30 - 5:00 pm
“Copyright, Digital Technology, and Social Justice,” moderated by Professor Jeffrey Omari
Trademarks are the symbols of commerce that adorn the items we buy and the services we use. A business can use trademark law as a shield to protect its brand investment and to protect the brand’s consumers from confusion in the marketplace. However, increasing evidence shows that trademark law can also be used as a sword to stifle fair competition and chill the expressive speech interests of individuals and marginalized groups. Trademarks now serve as symbols of cultural expression conveying messages about race, class, and society, wholly apart from the official messages intended by the trademark owner.

Given the expressive nature of trademarks, should the First Amendment play a greater role in balancing the interests of trademark owners against the interests of the public? Has trademark law been “captured” by powerful companies to the detriment of social discourse and fair commerce? Should trademark owners be incentivized to allow expressive discourse using their marks? Could a trademark protection system be reimagined to protect against consumer confusion while explicitly allowing such discourse? This panel will consider these questions.
Professor J. Janewa Osei-Tutu

Janewa Osei-Tutu is an Associate Professor of Law at Florida International University, and holds an LL.M., with distinction, in International and Comparative Law from McGill University, one of the premier academic institutions in Canada. She wrote her graduate thesis on trade-related intellectual property as it relates to developing countries, and continues to write in this area. Drawing on her academic and practical experiences, Professor Osei-Tutu’s scholarship focuses on the relationship between trade-related intellectual property, human development, human rights, and culture.

She joined academia after several years of intellectual property (IP) practice as Legal Counsel to the Patent & Trademark Office, and the IP Policy Directorate at Industry Canada (USPTO equivalent). In that capacity, Osei-Tutu advised the Canadian government on the IP aspects of certain trade negotiations, as well as IP submissions to international organizations, such as the WIPO and the WTO. In addition, she advised on complex litigation and legislative reform of Canada’s IP laws. Osei-Tutu’s legal experience includes commercial law practice with leading law firms in Canada and Ghana. She also clerked as an Associate Legal Officer for Trial Chamber II at the United Nations International Criminal Tribunal for Rwanda in Tanzania.

Professor Margaret Chon

Since joining the Seattle University faculty in 1996, Margaret Chon has been a dedicated scholar and teacher of intellectual property and critical theory. She is currently the Donald & Lynda Horowitz Professor for the Pursuit of Justice, and formerly Associate Dean for Research. Her current scholarship explores the global governance dimensions of intellectual property, especially their distributional consequences. During the 2011-12 year, she was the Senior Global Emile Noël Research Fellow in the Jean Monet Center for International and Regional Economic Law & Justice at New York University School of Law.

Following graduation from law school in 1986, Chon worked for a year as a staff attorney at the U.S. Court of Appeals for the Third Circuit. She then clerked for the Honorable A. Leon Higginbotham, Jr., and practiced intellectual property law with Schnader, Harrison, Segal & Lewis in Philadelphia. Immediately prior to her first academic appointment, she served in an administrative clerkship with Chief Judge Dolores K. Sloviter of the U.S. Court of Appeals for the Third Circuit, where she assisted in the revision of the local Third Circuit rules. Throughout her professional career, she has been and continues to be active in various community and professional organizations. She is a member of the American Law Institute and a fellow of the American Bar Foundation.

Professor Dustin Marlan

Dustin Marlan is an Assistant Professor of Law at the University of Massachusetts School of Law, where he teaches intellectual property and business law courses and directs the Community Development Clinic. His research explores the function of images and metaphors in various subject areas, including intellectual property, drug law reform, and clinical legal education. His recent scholarship includes “Unmasking the Right of Publicity” (forthcoming in the Hastings Law Journal), “Beyond Cannabis: Psychedelic Decriminalization and Social Justice” (in the Lewis & Clark Law Review) and “Visual Metaphor and Trademark Distinctiveness” (in the Washington Law Review). Professor Marlan previously served as a Clinical Teaching Fellow at the University of Michigan Law School. Before entering academia, he practiced law at Wilson Sonsini Goodrich & Rosati PC, in Seattle, WA, and at K&L Gates LLP, in his hometown of Pittsburgh, PA. He received his JD, cum laude, from the University of Pennsylvania Law School and his BA from Indiana University—Bloomington.

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Life-saving pharmaceuticals, life-changing diagnostic tests, and innovative medical devices often are protected by patent. The prospect of market exclusivity achieved in part from patent protection incentivizes expensive research and development by private firms and universities. But patents can also price patients out of accessing covered medicines, devices, and treatments, particularly in developing countries. Moreover, some developing countries have seen their own indigenous knowledge—once freely available and practiced in their community—converted to proprietary IP, subsequently productized and sold around the world.

To what extent should patent holders—whether private firms or non-profit entities like universities—concern themselves with pursuing patents and enforcing them in the public interest? What role do patents play in solving, or creating, public health problems? To what extent does patent law, policy, and practice impede social justice, and what collective action solutions or individual strategies exist for better utilizing patents or calibrating patent law to promote the public interest in global health? This panel will consider these and related questions.

MODERATOR
Dean Jacob H. Rooksby
Jacob H. Rooksby was appointed Dean of Gonzaga University School of Law in June 2018. He also holds a joint appointment as a tenured Professor of Law and Professor of Education. Prior to joining Gonzaga, Dean Rooksby was Associate Professor and Associate Dean at Duquesne University School of Law, where he taught Torts I and Torts II, among other courses. While on the faculty at Duquesne, Dean Rooksby was Of Counsel to the intellectual property (IP) practice group at Cohen & Grigsby, P.C. in Pittsburgh and served as an expert witness in IP litigation.


Upon earning his J.D. from the University of Virginia, Dean Rooksby joined McGuireWoods LLP in Richmond, Virginia, practicing in the firm’s IP litigation group and as a member of its higher education practice team. In addition to his law degree, he also holds M.Ed. (Social Foundations of Education) and Ph.D. (Higher Education) degrees from the University of Virginia. Dean Rooksby earned his undergraduate degree, summa cum laude, in Hispanic Studies and Government from the College of William & Mary, where he was inducted into Phi Beta Kappa.
Professor Sandra Park

Sandra Park is a Senior Staff Attorney in the ACLU Women’s Rights Project. At the ACLU, Sandra engages in litigation, policy advocacy, and public education at the federal, state, and local levels to advance gender equality and the rights of women and girls. Sandra has advocated for survivors of gender-based violence throughout her legal career. Much of her current work focuses on discrimination faced by victims of domestic violence and sexual assault in housing, law enforcement response, employment, and schools. Sandra is also responsible for the ACLU’s work strengthening patients’ genetic privacy rights and addressing the intersection of patent regulation and civil liberties. She represented twenty medical organizations, geneticists, and patients in a groundbreaking lawsuit challenging patents granted on two human genes related to breast and ovarian cancer, resulting in a unanimous 2013 U.S. Supreme Court ruling invalidating gene patents (Association for Molecular Pathology v. Myriad Genetics).

Sandra currently serves as Board Chair of Girls for Gender Equity and on the Executive Committee of the New York City Bar Association. She was selected as a Movement Maker by Move to End Violence, a ten-year initiative of the NoVo Foundation to build the social justice movement in the U.S. to end violence against girls and women. Before joining the ACLU, she worked as a Skadden Fellow at the Legal Aid Society of New York and clerked for U.S. District Judge Alvin Hellerstein of the Southern District of New York. She is a magna cum laude graduate of Harvard College and NYU School of Law.

Professor Mason Marks

Dr. Mason Marks is an assistant professor of law at Gonzaga University and an affiliate fellow at Yale Law School’s Information Society Project.

Professor Marks received his B.A. in biology from Amherst College, his M.D. from Tufts University School of Medicine, and his J.D. from Vanderbilt Law School. After law school, Dr. Marks practiced intellectual property law in San Francisco where he advised clients on securing and defending patent rights. After transitioning into academia, he worked as a research scholar at NYU Law School’s Information Law Institute and a visiting fellow at Yale Law School’s Information Society Project.

Dr. Marks’ research focuses on health law, data privacy, and FDA regulation. He is particularly interested in the application of artificial intelligence to medical decision making and how new technologies disrupt the flow of health information. His academic writing has been published in the NYU Journal of Legislation and Public Policy and is forthcoming in the Yale Journal of Law and Technology. His article Algorithmic Disability Discrimination will appear as a chapter in a forthcoming book published by Cambridge University Press.


Professor Madhavi Sunder

Madhavi Sunder is a Professor of Law at Georgetown Law, and a leading scholar of law and culture. She was named a Carnegie Scholar in 2006 and has been a Visiting Professor of Law at the Yale Law School, the University of Chicago Law School, and Cornell Law School. Her work traverses numerous legal fields, from intellectual property to human rights law and the First Amendment. Professor Sunder has published articles in the Yale Law Journal, the Stanford Law Review, the California Law Review, the Texas Law Review, and Law and Contemporary Problems, among others. Her book, From Goods to a Good Life: Intellectual Property and Global Justice, was published by Yale University Press in 2012.
In the last 30 years, the internet and corresponding advancements in digital technology have reshaped the relationship between art, culture, copyright, and IP rights holders. The West has seen tension between the content industry—longstanding IP rights holders who have a vested interest in maintaining the IP status quo—and the tech industry—those corporations that, because of changing norms in how IP is consumed in the digital age, derive value from these changing norms and modes of consumption. Meanwhile, because of these same technological changes, the developing world has in many ways embraced alternative IP practices (e.g., open source) that have impacted creativity, access to knowledge, and music production.

To what extent do traditional copyright norms advance or impede access to knowledge in our increasingly tech-heavy world? What role does copyright play in furthering the asymmetrical power dynamics that exist between creators of artistic works and IP rights holders? Given the changing technological dynamics of the digital era, how effective can alternative copyright and IP practices be for artists and other content makers, both domestic and abroad? What copyright issues arise from data-centric technological development? And, how can copyright policy further social justice in a tech-driven society? This panel will consider these and related questions.
Professor Brian Frye

Brian L. Frye is the Spears-Gilbert Associate Professor of Law at the University of Kentucky College of Law and joined the faculty in 2012. He teaches classes in civil procedure, intellectual property, copyright, and nonprofit organizations, as well as a seminar on law and popular culture. Previously, he was a Visiting Assistant Professor of Law at Hofstra University School of Law, and a litigation associate at Sullivan & Cromwell LLP. He clerked for Judge Andrew J. Kleinfeld of the United States Court of Appeals for the Ninth Circuit and Justice Richard B. Sanders of the Washington Supreme Court. He received a J.D. from the New York University School of Law in 2005, an M.F.A. from the San Francisco Art Institute in 1997, and a B.A. from the University of California at Berkeley in 1995. His research focuses on intellectual property and charity law, especially in relation to artists and arts organizations.

Professor Frye is also a filmmaker. He produced the documentary Our Nixon (2013), which was broadcast by CNN and opened theatrically nationwide. His short films and videos have shown in the 2002 Whitney Biennial, the New York Film Festival, and the San Francisco International Film Festival, among other venues, and are in the permanent collection of the Whitney Museum of American Art. His critical writing on film and art has appeared in October, The New Republic, Film Comment, Cineaste, Senses of Cinema, and Incite! among other journals.

Professor Cathay Smith

Cathay Y. N. Smith is an Associate Professor of Law at the University of Montana Blewett School of Law where she teaches intellectual property law, property law, and art and cultural property law. Outside of law school, Prof. Smith serves on the Board of Directors for the Missoula Art Museum. Prior to joining the faculty at Montana, Professor Smith taught as a fellow at the University of Denver Sturm College of Law, and was an intellectual property attorney at Katten Muchin Rosenman LLP in Chicago. While in private practice, Professor Smith represented multinational technology, fashion, and entertainment and media corporations on intellectual property issues and disputes. Prof. Smith earned her M.Sc. from the London School of Economics and Political Science, J.D. from Loyola University Chicago School of Law, and B.S. from Washington and Lee University. Her scholarship focuses on copyright and trademark law, art law, cultural property and heritage law, and IP theory.

Professor Lateef Mtima

Lateef Mtima is a Professor of Law at the Howard University School of Law. After graduating with honors from Amherst College, Professor Mtima received his J.D. degree from Harvard Law School, where he was the co-founder and later editor-in-chief of the Harvard BlackLetter Journal (today the Harvard Journal on Racial and Ethnic Justice). Professor Mtima is the editor/contributing author of Intellectual Property, Social Justice, and Entrepreneurship: From Swords to Ploughshares (Edward Elgar 2015) and the co-author of Transnational Intellectual Property Law (West Academic 2016), and has published numerous scholarly articles in the field of intellectual property law. The Founder and Director of the Institute for Intellectual Property and Social Justice, an accredited Non-governmental Organization Member of the World Intellectual Property Organization (WIPO), which advocates for the recognition and fulfillment of social justice obligations in the application of national and global intellectual property law and policy, Professor Mtima is a recipient of the 2018 Public Knowledge “IP3” Award for his work in developing this scholarly field.
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