



9th Annual Texas A&M Intellectual Property Scholars Roundtable

FINAL PROGRAM

FRIDAY, NOVEMBER 7, 2025

12:00 Lunch

1:00 Welcoming Remarks

Prof. Peter K. Yu, University Distinguished Professor, Regents Professor of Law and Communication, Director, Center for Law and Intellectual Property, Texas A&M University School of Law

1:15 Panel 1: Trademark Law

Moderator: Prof. Doris E. Long, University of Illinois Chicago School of Law

Presenters: Prof. Rachael M. Dickson, Willamette University College of Law
“The Art of Trademark Disobedience”

Prof. Glynn S. Lunney, Jr., Texas A&M University School of Law
“Trademarks, Functionality, and Competition”

Prof. Sari Mazzurco, SMU Dedman School of Law
“Source & Solidarity”

2:45 Coffee Break

3:00 Panel 2: Copyright Law

Moderator: Prof. Peter K. Yu, Texas A&M University School of Law

Presenters: Prof. Doris E. Long, University of Illinois Chicago School of Law
 “The Necessary Death of Derivative Rights?”

 Prof. Timothy J. McFarlin, Cumberland School of Law, Samford University
 “Authorship and Time”

 Prof. Guy A. Rub, Temple University Beasley School of Law
 “SCOTUS, Marginalized”

4:30 Coffee Break

4:45 Panel 3: International Intellectual Property Law

Moderator: Prof. Marshall Leaffer, Indiana University Maurer School of Law

Presenters: Dr. Justin Koo, Faculty of Law, University of the West Indies, St. Augustine (Trinidad
 and Tobago)
 “Importing Fair Use”

 Prof. V.K. Unni, Indian Institute of Management Calcutta (India)
 “Injunctive Relief in Pharmaceutical Patent Litigations—Has the Indian Judiciary Kept
 the Bar Too High?”

 Prof. Peter K. Yu, Texas A&M University School of Law
 “Intellectual Property, Sustainable Development, and a New Social Contract”

6:15 Roundtable Adjourns for the Day

7:00 Dinner for Roundtable Participants

 Waters
 301 Main Street, Fort Worth

SATURDAY, NOVEMBER 8, 2025

9:00 Breakfast

9:30 Panel 4: Artificial Intelligence

Moderator: Prof. Peter K. Yu, Texas A&M University School of Law

Presenters: Matt Blaszczyk, Research Fellow in Law and Mobility, University of Michigan Law School
 “Posthuman Copyright: AI, Copyright, and Legitimacy”

 Prof. Nikola Datzov, University of North Dakota School of Law
 “AIth Circuit Court of Appeals”

 Dr. Emma Perot, Faculty of Law, University of the West Indies, St. Augustine (Trinidad and Tobago)
 “A Digital Right of Publicity for the AI World”

 Wang Yijiao, J.S.D. Fellow, Information Law Institute, NYU School of Law
 “Lockean Analysis of Authorship for AI-Generated Works and Derivative Rivalry”

11:15 Coffee Break

11:30 Panel 5: Patent Law

Moderator: Prof. Nikola Datzov, University of North Dakota School of Law

Presenters: Prof. Andrew C. Michaels, University of Houston Law Center
 “Mistaken Belief Defenses in Patent Law”

 Prof. Marvin J. Slepian, Colleges of Engineering and Law, University of Arizona
 “Boolean Explanations Bring Interpretability to Artificial Intelligence Search in Patent Prior Art Assessment”

 Prof. Francisco Tschen '03 '05, Florida International University College of Law
 “Training the Future: How Introducing Apprenticeships Through Patents Can Revitalize American Industry”

1:00 Lunch

2:15 Panel 6: Technology Law

Moderator: Prof. Jeff W. Slattery, Texas A&M University School of Law

Presenters: Prof. Monika Leszczyńska, Texas A&M University School of Law
 “Designing Unfairness: Public Values and the Modern Law of Manipulative Design”

 Prof. Argyri Panezi, Faculty of Law, University of New Brunswick (Canada)
 “*Thomson Reuters v. Ross Intelligence*: Copyright Law Meets Access to Justice”

 Prof. Ioanna Tourkochoriti, University of Baltimore School of Law
 “Social Media Platform Regulation in the US and the EU: Towards a Divided Internet?”

3:45 Closing Remarks

 Prof. Peter K. Yu, Texas A&M University School of Law

4:00 Roundtable Adjourns for the Day

6:00 Dinner for Roundtable Participants

 Wild Salsa
 300 Throckmorton St, Fort Worth

Commentators

- Prof. Timothy T. Hsieh, Oklahoma City University School of Law
- Prof. Marshall Leaffer, Indiana University Maurer School of Law
- Prof. Jeff W. Slattery, Texas A&M University School of Law

ABSTRACTS

Matt Blaszczyk, Research Fellow in Law and Mobility, University of Michigan Law School
“Posthuman Copyright: AI, Copyright, and Legitimacy”

Copyright’s human authorship requirement is an institutional attempt to assert legal, moral, and popular legitimacy at a time of crisis. The U.S. Copyright Office, the courts, and the so-called copyright humanists, portray the requirement as a beacon of copyright’s faith, meant to protect authors in the AI era.

The minimal threshold for human authorship, however, forces us to question whether it is merely rhetoric, which the law has always employed regardless of its justification. This article bridges the gap between doctrinal, theoretical, socio-legal and constitutionalist scholarship, arguing that human authorship is an ideology to which the law is only nominally faithful.

The article analyzes the U.S. Copyright Office’s pronouncements, the D.C. Circuit ruling in *Thaler v. Perlmutter*, and the pending case of *Allen v. Perlmutter*, arguing that the Office’s approach, despite its rhetoric, is not meant to meaningfully stop the AI revolution. Whether interpreted broadly or narrowly, the human authorship requirement is unlikely to protect the interests of human authors in the AI era.

Incorporating insights from copyright history and theoretical debates about romantic authorship, this article argues that copyright has failed to protect those interests for over a century, instead favoring the interests of powerful corporations. If and when copyright becomes a regime for robots, the question is whether that expansion will also primarily benefit corporations. Arguably, copyright has never cared much for human authors—and it is time to question if we should keep pretending otherwise.

Prof. Nikola Datzov, University of North Dakota School of Law
“AIth Circuit Court of Appeals”

The AI Revolution not only fundamentally changed how law is practiced, it is also starting to transform the administration of justice and how judges perform their judicial functions. While the uprising of “robot judges” has been theorized for decades, the meteoric advancement of generative AI since the release of ChatGPT 3.5 in November 2022 has transformed the potential of AI justice from theory into immediate reality. In July 2025, at least two federal judges issued opinions with significant errors and non-existing citations, which appeared to be AI-generated. Both opinions were retracted, though one of the judges refused a party’s motion for a public explanation of the issue—the judge’s potential reliance on AI remained a secret held within chambers. All of this suggests that if federal judges are not already relying on AI to perform some of their judicial work, they likely soon will be. Some limited scholarship has begun to examine the normative implications of delegating judicial functions to AI.

In a recent paper, *AI Jurisprudence: Toward Automated Justice*, I offer a detailed analysis of how AI is likely to impact the U.S. judicial system, advance a taxonomy for AI judges that divides AI judicial functions into three tiers and ten levels, and propose a framework of “guided discretion” for governing judicial AI use. Beyond the theoretical, normative, and practical questions at the heart of this emerging transformation of our court system, some scholars have also begun to empirically test AI’s capability to perform certain judicial tasks in discrete legal areas. For example, some have analyzed whether AI can help with constitutional interpretation, contract interpretation, and copyright fair use analysis, as well as other legal issues.

What is entirely missing from the literature in this area, however, is a comprehensive empirical examination of whether current generative AI is equipped to handle the performance of judicial tasks traditionally

entrusted to judges. This article looks to address this gap in knowledge and to help provide reliable empirical evidence regarding AI's capability (and limits) for writing judicial opinions and making case decisions.

To analyze AI's capabilities, the author relies on the latest AI platforms (OpenAI's ChatGPT 5, released on August 7, 2025 and Anthropic's Claude 4 released on May 22, 2025) to decide the full slate of cases decided by the U.S. Court of Appeals for the Eighth Circuit during its 2024–2025 term. Specifically, the article will examine AI's ability to effectively (1) analyze and summarize the arguments provided by the parties' briefs; (2) correctly decide how the disputed legal issues should be resolved; (3) write a persuasive and articulate judicial opinion based on guidance for how the case should be decided.

In much of the academic scholarship discussing the delegation of judicial tasks to generative AI, the focus has been on balancing the efficiency of AI with the (presumed negative) impact on the quality of judicial decision-making. Undoubtedly, the AIth Circuit will decide the 2024–2025 term of cases in a fraction of the time in which it took the Eighth Circuit judges and law clerks to work through the mountain of pages. The crux of this project seeks to provide an answer on the impact to the quality of the judicial decision-making between the two types of adjudicators for the same set of cases. This data-driven perspective will inform judges, courts, parties, and policy makers regarding which tasks and which types of cases may benefit from AI assistance.

Prof. Rachael M. Dickson, Willamette University College of Law
“The Art of Trademark Disobedience”

In the past few years, several artists and art collectives have released consumer products under trademarks which deliberately infringe on existing brands as a form of protest. In 2022, art collective MSCHF launched the Cease & Desist Grand Prix, which sold shirts displaying the logos of famous companies including Disney, Starbucks, and Amazon. Participants “bet” on which company they thought would send MSCHF the first cease-and-desist letter by purchasing a shirt bearing that company's logo (Subway won). More recently, artist Stuart Semple, who has campaigned against brands “owning” colors for years, sold paint formulations meant to emulate artist Yves Klein's signature International Klein Blue and the famous Tiffany Blue under the names Easy Klein and Tiff Blue.

These acts can be seen as a form of civil disobedience, akin to that engaged in by artists such as Banksy and the Guerilla Girls, who create often-transgressive graffiti, posters, and stealth projections which critique social injustices. Here though, the artists involved in trademark disobedience use the brands of others as trademarks for sellable products, which serve both as source identification and commentary on the companies at issue and the values they profess. As MSCHF said in its mission statement, “There is no better way to start a conversation about consumer culture than by participating in consumer culture.”

This paper examines this trend in-depth, exploring the ways in which current trademark and First Amendment law (in light of the Supreme Court's holding in *Jack Daniels v. VIP Products*) likely fail to protect such forms of expression. It also evaluates whether alternative doctrines, such as the broad fair use doctrine approach proposed by Lisa Ramsey and Christine Farley, could effectively balance the competing interests at issue in this form of trademark disobedience.

Dr. Justin Koo, Faculty of Law, University of the West Indies, St. Augustine (Trinidad and Tobago)
“Importing Fair Use”

There has been an increasing trend to ask whether common law countries should move from UK-centric fair dealing exceptions and limitations to the US-styled fair use approach. The root of this proposed shift would appear to be a desire for increased flexibility and agility in addressing contemporary copyright issues. Jurisdictions such as Australia, Hong Kong, Israel, Liberia, Malaysia, New Zealand, Philippines, Singapore,

Sri Lanka, Taiwan and large parts of the Commonwealth Caribbean have already expressly introduced various elements of fair use into their copyright statutes in lieu of, alongside or as a means of interpreting ‘fair dealing’. Alternatively, countries like Australia, Canada, China and Kenya have introduced more standards-oriented approaches to exceptions and limitations in place of the traditional prescriptive rules approach synonymous with fair dealing.

This topic is not new as many academics have debated the efficacy of fair use versus fair dealing and subsequently whether fair use should be transplanted into other jurisdictions. However, much of this literature is focused on fair use replacing fair dealing in countries with well-developed copyright systems like the UK, Canada and Australia. Additionally, there is literature on the Israeli experience with adopting fair use. However, it remains unclear whether a shift to fair use is feasible or practically desirable for countries with developing copyright systems. As such, this article will explore the requirements for effectively importing fair use into a non-US copyright system.

Prof. Monika Leszczyńska, Texas A&M University School of Law

“Designing Unfairness: Public Values and the Modern Law of Manipulative Design”

Digital platforms often use interface designs that steer users toward choices they might not otherwise make—such as repeatedly prompting for data access or highlighting the consent option. Whether such tactics amount to ordinary persuasion or unfair manipulation remains legally unsettled. The Federal Trade Commission’s unfairness doctrine was designed to address practices causing tangible economic harm, but it offers little guidance for digital designs that compromise autonomy or privacy instead of money.

Drawing on a nationally representative survey of 1,191 U.S. adults, this article examines how people judge the acceptability of common design tactics. The study varied the type of harm—none, monetary, or privacy-related—and measured how acceptable each practice seemed and how strongly it was seen to threaten freedom of decision-making. Participants found designs prompting users to share personal data less acceptable than those causing no harm, such as merely renewing a free app. They also viewed “roach motels” that make it difficult to cancel subscriptions as less acceptable than neutral designs, regardless of whether they led users to pay, share data, or continue a free service. Across all contexts, greater perceived threats to decision-making freedom predicted lower acceptability.

The findings identify the public values that shape judgments of acceptability in digital markets: consumers disapprove of practices that compromise autonomy and privacy even in the absence of financial injury. Building on this insight, the article proposes an empirically grounded approach to unfairness that uses public judgments of acceptability and perceived threats to decision-making freedom as evidence of the community standards the doctrine was designed to reflect. By linking evidence of how people evaluate manipulative design to the normative foundations of unfairness law, the analysis offers a principled and democratically legitimate way to adapt the doctrine to the realities of the digital marketplace.

Prof. Doris E. Long, University of Illinois Chicago School of Law

“The Necessary Death of Derivative Rights?”

Derivative rights have long been a bastard child of copyright. Sitting between reproductive rights and original new works, even today, the space between these boundaries is not always clear. If you are an author, they are the economic bonanza for your original work. If you are a fan, they are a chance to hone your creativity while paying homage to a beloved work. In the Victorian era, the balance originally favored “original adaptations” of works like Dicken’s *Christmas Carol*, but economic considerations eventually tipped in favor of control by the author of the original work. Despite an occasional hiccup, such as *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, we remain firmly entrenched in the era where such derivative rights are either ignored (AI applications) or denigrated (platform interoperability). It is

time to acknowledge that derivative rights are a stumbling block to creativity and innovation that should be eliminated from copyright protection. But before we do so, maybe we should reconsider the value of derivative rights in encouraging original works that can serve as the building blocks of a dynamic public domain and be doubly clear about what we are doing and why.

Prof. Glynn S. Lunney, Jr., Texas A&M University School of Law
“Trademarks, Functionality, and Competition”

Courts and commentators have long thought that the purpose of trademark and unfair competition law is to distinguish fair competition from unfair competition and prohibit the latter. Yet, trademark law has a more fundamental, more foundational purpose. Before trademark law can distinguish fair competition from unfair competition, there must first be competition. That makes ensuring competition trademark law’s highest priority. Identifying and prohibiting unfair competition becomes, by necessity, a subordinate concern. Until 1982, courts recognized this hierarchy and enforced a broad and flexible functionality limitation on trademark or trade dress protection to ensure competitive markets. In 1982, however, this changed. Judge Rich of the Court of Customs and Patent Appeals held that a product feature could serve an important non-trademark function, and thus be functional in fact, yet nevertheless not be functional for purposes of trademark law. Over the ensuing two decades, this approach spread and sharply constrained the reach of the functionality limitation. In 2001, the Supreme Court stepped in and seemed to reinstate the broad and flexible approach of the pre-1982 common law. Yet courts have failed to let go of Judge Rich’s approach. As a result, courts continue to protect as trademarks product features that serve important non-trademark purposes. This was and is a mistake. Recognizing that ensuring competition, rather than ensuring fairness, is trademark law’s primary objective leads to a simple conclusion. If consumers, or, at least, some of them, want a product feature for its own sake, without regard to who made the product, then the product feature is functional and may not be protected under trademark or unfair competition law.

Prof. Sari Mazzurco, SMU Dedman School of Law
“Source & Solidarity”

Trademark law has become the new frontier of union-busting. Companies like Trader Joe’s, Starbucks, and Medieval Times have brought unprecedented suits against their employee unions for trademark infringement in relation to their organizing activities. This sort of litigation puts courts in the difficult position of reconciling trademark protection with unionization rights. Their attempts to apply standard trademark doctrines in this context reveal a deeper problem: current trademark law is incoherent when applied to labor unions.

This incoherence stems from the fact that today’s trademark law has become disconnected from the reason trademark law applies to labor unions in the first place. This article recovers that basis by tracing the evolution from pre-Lanham Act denial of trademark protection to unions, through sui generis state statutory protection, to modern federal collective and certification marks.

Through a historical analysis of union names and labels and their protection, I demonstrate that trademark law applies to labor unions on a fundamentally different normative basis than standard trademark doctrines. Unlike conventional trademarks that indicate the source of goods or services, union names and insignia are instruments of labor solidarity. They combine political association with economic action to advance workers’ collective interests. Contemporaneous with their proliferation, union labels were commonly understood to be “weapons” unions deployed in “warfare” against employers. Unions used them to agitate for unionization and coordinate boycotts, rather than merely indicate source. Congress embraced this understanding when it extended trademark protection to union marks.

Courts currently struggle with union-trademark disputes because they have not yet recognized that unions are (and were regarded by Congress to be) characteristically different than standard trademark producers, and labor solidarity is the core normative basis for bringing union names and insignia within trademark law's scope. Courts do not need to force union marks into ill-fitting standard trademark doctrines focused on consumer confusion. Instead, they should analyze these disputes guided by the value of labor solidarity. Labor solidarity, as a beacon, illuminates what is truly at stake and how courts can target harm in ways consistent with trademark law's historical accommodation of labor interests.

This reframing has immediate practical importance following the Ninth Circuit's decision that *Trader Joe's United* infringed *Trader Joe's* trademark, Starbucks' suit against the Starbucks Workers Union continues, and similar cases emerge. If courts ground trademark analysis in labor solidarity rather than source indication, they can adapt existing doctrines to protect legitimate union organizing while preventing actual consumer deception. Trademark law can serve its intended function, rather than become a tool for union suppression.

Prof. Timothy J. McFarlin, Cumberland School of Law, Samford University
"Authorship and Time"

How much time do courts have to review who authored a copyrighted work? The question simmers uneasily beneath the surface of supposedly settled law. How we answer it is foundational not just for copyright but for our civil justice system as a whole, as it shines a vital light on the tension between accuracy and efficiency inherent within.

Thus far courts have largely interpreted the U.S. Copyright Act to bar a request to review authorship if it is not made within three years from notice of repudiation. So if you write a screenplay with someone and she thereafter insists she wrote it alone, you have three years to sue. This is essentially a one-shot approach: sue now or forever abandon your authorship and the rights it entails. But the Supreme Court has allowed infringement suits within three years after notice of any infringing act, even if that act is just a repetition of an infringement that first occurred many years ago. So if someone copies your screenplay, but the resulting film does not make much money on first release, you can wait to sue until that same film is more successfully re-released decades later. This allows for many potential shots: sue whenever it is "worth the candle," as the Court put it in *Petrella v. MGM*, thereby avoiding a profusion of litigation over earlier, less-profitable infringements.

This article argues, first, that the distinction is illusory: *Petrella's* rationale applies at least as persuasively to assertions of authorship. Allowing courts to review authorship whenever it is worth reviewing helps ensure they will not have to review it when it is not. And second, state law may hold the true key here, given that, unlike infringement, authorship is likely not a "claim" under the Copyright Act. Such state law, which would govern a claim for disgorgement of profits from a copyright co-owner, may provide for a longer statute of limitations, a separate-accrual approach, or both.

But beyond these arguments, deeper tensions are at play: if courts review later assertions of authorship, this will increase their caseload while testing their ability to navigate faded memories, lost documents, and dead authors' estates. Further, for every meritorious but belated assertion of authorship, there will likely be an equal or greater number of weak suits in search of easy settlements. So in considering the fraught relationship between authorship and time, this article will help policymakers strike the best possible balance between efficiency and accuracy in copyright and beyond.

Prof. Andrew C. Michaels, University of Houston Law Center
“Mistaken Belief Defenses in Patent Law”

Though it is often said that “I thought it was legal” is no defense, the reality is that mistaken beliefs about both fact and law are often permitted to negate scienter requirements, in both criminal and civil law. In patent law, mistaken belief defenses are permitted in two different contexts: to negate the willfulness required for enhanced damages and to negate the knowledge required for indirect infringement. However, the scope and application of these defenses remains unclear and problematic.

Mistaken belief defenses in patent law are undertheorized, resulting in important and unappreciated open questions, as well as troubling inconsistencies. For example, in the context indirect infringement, the Supreme Court has made clear that mistaken beliefs in claim construction may negate the requisite knowledge, but that mistaken beliefs in invalidity may not, despite both being ultimately questions of law. The law is not currently clear as to the status of other defenses, such as patent exhaustion, license, or equitable unenforceability defenses. This article develops a methodology for assessing whether other defenses should be eligible for mistaken belief defenses and applies this methodology to suggest answers for patent law’s primary other defenses.

Courts have also inconsistently applied timing and reasonableness requirements across different defense types. Even more perplexing, courts at times seem to perversely apply more lenient standards for negating the lower “knowledge” requirement for indirect infringement, as compared with the higher “willfulness” standard for enhanced damages. There are also unsettled questions regarding whether a mistaken belief rejected by a lower court could still be reasonable while being appealed, and courts often fail to recognize the importance of the dynamic nature of beliefs and reasonableness over time.

This article argues for a more coherent approach that would limit mistaken belief defenses in patent law to reasonable beliefs that were actually held at the time of infringement. For indirect infringement, only mistakes about non-infringement, patent exhaustion, and licensing should provide defenses, while mistakes about invalidity and equitable defenses should not. This framework would better align with statutory structure, reduce litigation burdens, and create appropriate incentives for patent system participants to investigate and respect patent rights, while still protecting those who make genuine, reasonable errors about the scope of their legal obligations.

Prof. Argyri Panezi, Faculty of Law, University of New Brunswick (Canada)
“*Thomson Reuters v. Ross Intelligence*: Copyright Law Meets Access to Justice”

How we define, classify, and assign ownership of court data directly impacts both access to justice and access to knowledge about the justice system. What does a copyright law ruling in *Thomson Reuters v. ROSS Intelligence* reveal about access to court data, its use as training data for AI systems, and the implications for access to justice?

On February 11, 2025, the U.S. District Court for the District of Delaware issued a summary judgement in *Thomson Reuters*, a closely watched copyright case with major implications for artificial intelligence and copyright, legal innovation, and access to justice. The case brought by Thomson Reuters, owner of the legal research platform Westlaw, accused the AI startup ROSS Intelligence of copyright infringement. Specifically, Thomson Reuters alleged that ROSS unlawfully used Westlaw’s headnotes and Key Number System to train its AI-powered legal research tool.

Westlaw’s headnotes are editorial summaries extracted from judicial opinions. Circuit Judge Bibas, departing from a previous 2023 opinion, ruled in favor of Thomson Reuters, holding that the headnotes were sufficiently original to merit copyright protection. The judgment emphasized that “even a headnote

taken verbatim from an opinion is a carefully chosen fraction of the whole” and thus copyrightable. The judgement also referred to the existence of a “potential market for AI training data” which includes legal opinions—framing court data increasingly as a commodity.

ROSS has since appealed the decision to the U.S. Court of Appeals for the Third Circuit. In its opening brief filed on September 22, 2025, the company raises two critical issues: (1) Is a short quote or paraphrase of a judicial holding copyrightable? and (2) Does the fair use doctrine protect ROSS’s internal use of Westlaw’s headnotes in memos that served as training data for an AI legal search engine that produced only non-infringing outputs? While we await for Thomson Reuters’s response brief, numerous amici curiae briefs have been filed in support of ROSS, urging the court to reverse the district court’s ruling. These developments highlight broader concerns not only about copyright law and AI, but also about systemic barriers to accessing court data—barriers that undermine access to justice.

The implications of the district court’s judgement are troubling. If headnotes, which may contain verbatim extracts from public judicial opinions, are considered copyrightable, this court set a precedent that severely restricts how court data can be accessed and used. Moreover, by framing court data as a marketable asset, especially for the purposes of AI training, we are neglecting the fundamental public interest in broad, equitable access to the law.

In response to the judgment, this paper seeks to both theorize and classify court data. It analyses the arguments presented by the parties in *Thomson Reuters* and argues that courts must adopt a more proactive role in enhancing access to justice by making their judgments, opinions, and related court data freely and widely available. Doing so would not only support low-income litigants and legal aid services but also foster meaningful competition in the legal tech market by leveling the data playing field.

Dr. Emma Perot, Faculty of Law, University of the West Indies, St. Augustine (Trinidad and Tobago)
“A Digital Right of Publicity for the AI World”

This paper proposes a digital right of publicity framework grounded in a justificatory framework that underpins principles of consent, contractual limits, and targeted statutory intervention designed to balance freedom of speech against the commercial and dignitary interests of individuals.

The proliferation of generative AI has created unprecedented ways to capture and generate persona (name, voice, and likeness). Technologies such as digital holograms, deepfakes and voice synthesizers can produce accurate replicas of persona. At the same time, persona may be used to train large language models (LLMs) that generate outputs with no discernible trace of the individual, yet companies still benefit from the underlying individual. This technology raises several questions concerning how to provide appropriate protection for individuals, while facilitating technological advancement and the preservation of free speech. The analog right of publicity was prescient in that it has already considered the earliest types of replication: look-alikes and sound-alikes, thus providing a basis for regulation of commercial output. But output in the form of digital persona in expressive works raises First Amendment concerns. Input, which is not done in a public-facing manner, does not fit comfortably within the existing legal framework which is dependent on identifiability of the individual for a successful claim.

The paper answers the research question: How can law regulate the use of persona in input and output stages of generative AI?

Prof. Guy A. Rub, Temple University Beasley School of Law
“SCOTUS, Marginalized”

The federal judiciary plays a crucial role in the development of copyright law. This legal framework needs to respond to fast-moving technological changes, but in the last few decades, Congress has shown little appetite for revising the Copyright Act. The result is a complex legal framework in need of constant updating, with the federal judiciary being the primary institution capable of fulfilling this task.

What role, then, does the Supreme Court play in this ecosystem? This article argues that contrary to the prevailing narrative in much of copyright scholarship, a closer examination reveals that the Court’s influence in recent decades has been surprisingly modest. In theory, although the Court hears fewer than one copyright case per year, its decisions can profoundly reshape the trajectory of copyright law and disrupt the delicate equilibrium that sustains this complex legal ecosystem. However, despite this underlying fragility, copyright law has proven remarkably resilient, often evolving in unexpected ways that mitigate, sidestep, or even neutralize the destabilizing force of the Court’s rulings.

As test cases, the article examines six landmark 21st-century Supreme Court decisions that had the potential to reshape copyright law profoundly. Despite the extensive discussion these cases have provoked, including in hundreds of legal articles, few studies have explored their long-term impacts, a gap this work addresses. The article shows how various stakeholders and forces within the copyright ecosystem have tempered the disruptive potential of these rulings. Some of those mitigating forces are within our legal system. For example, lower courts, time and again, have narrowed the scope of Supreme Court opinions, confining their applicability to specific factual circumstances. Other mitigating forces are external to the legal system itself. For instance, technological innovation and evolving business models have rendered some decisions quickly obsolete, while public pressure and grassroots movements have redirected copyright’s trajectory in ways that diverge from the Court’s guidance. Collectively, these dynamics have effectively bypassed the Supreme Court, curbing the broader influence of its rulings.

Ultimately, this article demonstrates that, at least in the last few decades, the Supreme Court’s role in shaping copyright law is inherently limited. While its decisions naturally carry some weight, they are frequently constrained by a convergence of other forces. Given the incremental nature of copyright litigation—dominated by federal courts in California and New York which routinely interpret the law’s open-ended legal standards—the Supreme Court is unlikely to assume a more central role in the development of copyright law. This reality underscores both the adaptability of copyright law and the intricate interplay between judicial interventions and the broader ecosystem in which they operate.

Prof. Marvin J. Slepian, Colleges of Engineering and Law, University of Arizona
“Boolean Explanations Bring Interpretability to Artificial Intelligence Search in Patent Prior Art Assessment”

Intellectual property plays a crucial role in driving technological and economic advancement in the United States and worldwide. A key factor in translating scientific and technical breakthroughs into valid, useful, and patentable inventions is ensuring that a patent application’s written description demonstrates novelty and non-obviousness. A critical step in this process involves comparing the new submission to existing technical work—known as “prior art”—found in both issued and published patents globally, as well as in academic literature. This necessitates the use of *effective* and *explainable* search tools. With the rapid increase in patent applications, artificial intelligence (AI) has emerged as a powerful tool to assist, streamline, and accelerate this process. However, AI search—especially that based on neural networks—is unexplainable due to the “black box” nature of its underlying models. This opacity conflicts with legal need to justify why prior art was identified. In contrast, older search algorithms based on Boolean methods are inherently explainable, as they rely on direct query-to-document matching (“what you see is what you get”).

Here, we compare and contrast the efficacy and explainability of AI search versus traditional Boolean search. Specifically, we explore two research questions: (a) Can Boolean methods explain the results of AI search? and (b) Can Boolean search fully replace AI search? To address the first question, we develop a method that generates Boolean queries that approximate the outputs of AI search using a set of linguistic heuristics. For the second, we adapt these heuristics to construct Boolean queries based solely on the patent of interest and compare their outputs against AI search. Our experiments on a large patent database indicate that while Boolean methods can explain a majority of AI search results, they cannot fully replace AI search. This suggests that a hybrid approach—where AI retrieves prior art and Boolean methods provide explainability—may represent the future of patent search.

Prof. Ioanna Tourkochoriti, University of Baltimore School of Law

“Social Media Platform Regulation in the US and the EU: Towards a Divided Internet?”

This article analyses the systems of legal regulation of online social media platforms as regards hate speech and misinformation in the U.S. and the EU. It discusses the constitutional doctrine of “horizontal effect” which allows regulation of social media platforms in the EU, as opposed to the “state action” which complicates such regulation. It explains how the relationships between the government, private actors, the owners of social media platforms and the users of the platforms put to the test the constitutional doctrines that exist in the United States. It analyses the sophisticated system created by the Digital Services Act (DSA) in the EU and compares with the regulation that exists in the U.S. The DSA enhances users’ rights and imposes important transparency requirements on platforms, while strengthening their obligations to address hate speech and misinformation. It engages with *Moody v. NetChoice*, the latest decision by the U.S. Supreme Court on the topic and the regulatory options it allows. It discusses the differences in social media regulation in the US and the EU and explores whether they are likely to lead to a division of the internet. It examines the state of the art of the technology the platforms are using to detect hate speech and misinformation and evaluates the legal responses in the US and the EU in this respect. It also makes suggestions for further research that is needed to address hate speech, incitement to hatred and misinformation online.

Prof. Francisco Tschén '03 '05, Florida International University College of Law

“Training the Future: How Introducing Apprenticeships Through Patents Can Revitalize American Industry”

The U.S. patent system was originally designed not only to incentivize innovation but also to facilitate the transfer of knowledge to the public. Historically, apprenticeship requirements were a key mechanism for ensuring that new industries took root by mandating inventors to train future generations of skilled workers. However, as the patent system evolved, written disclosure replaced hands-on training, leaving many industries without a structured means of knowledge dissemination. This in turn has resulted in a hampering of innovation and development. Particularly problematic in the modern era, where emerging technologies—such as semiconductor fabrication, artificial intelligence, and biotechnology—require specialized expertise, proprietary equipment, and complex manufacturing processes that cannot be fully conveyed in a written specification alone.

This article proposes reinstating the historical apprenticeship requirement of the Statute of Monopolies within the U.S. patent system, while leveraging maintenance fees as a mechanism for compliance. By tying patent renewal to workforce development, inventors and corporations would be incentivized to train apprentices, ensuring that new technologies translate into job creation, economic security, and industrial competitiveness.

This policy proposal aligns with the original intent of the patent system—to promote the progress of science and useful arts—while addressing the modern challenges of knowledge monopolization and labor shortages. Reintroducing apprenticeship requirements would help revitalize American manufacturing and strengthen

domestic innovation, ensuring that patents serve not just as legal protections for inventors, but as catalysts for economic and technological progress.

Prof. V.K. Unni, Indian Institute of Management Calcutta (India)

“Injunctive Relief in Pharmaceutical Patent Litigations—Has the Indian Judiciary Kept the Bar Too High?”

India’s twenty-year journey since its adoption of a patent system inspired by the WTO framework has a lot to offer. Injunctive relief and other such equitable remedies is one such area where the Indian courts are constantly adapting and charting its own path. India does not need to copy the western system on injunctions; the country’s judiciary is capable of structuring a nuanced stand which will give adequate emphasis to protection of the “public interest” without stifling innovation and entrepreneurship. Analysis of recent case law make it very clear that the approach of courts is not to blindly invoke the “public interest” principle and deny “injunctive relief” in cases where a competitor arbitrarily brings in the “public interest” defense.

Wang Yijiao, J.S.D. Fellow, Information Law Institute, NYU School of Law

“Lockean Analysis of Authorship for AI-Generated Works and Derivative Rivalry”

The Copyright Office’s 2025 report on copyright and artificial intelligence reiterates that works generated via prompting alone do not satisfy the human authorship requirement. While the Copyright Office later allowed registration for an image containing AI-generated elements that used inpainting tools based on a selection, coordination, or arrangement of these elements, it explicitly distinguishes between inpainting and “prompts alone” in its 2025 report. This paper explores whether and when AI users should qualify the author of works generated solely from prompts through the lens of Lockean justifications for intellectual property.

Applying Lockean theory to intellectual property (IP) is notoriously contentious, partly because intangible works are considered non-rivalrous. This paper first addresses common objections to Lockean justifications, examining their specific relevance to prompt engineering. It also defends the Lockean framework by introducing what I call “derivative rivalry” which posits that while an intellectual work itself may be non-rivalrous, the economic and social opportunities for downstream creators who use it as source material for subsequent reproduction are practically rivalrous. Finally, this paper connects this Lockean argument to my broader JSD project on extended creativity and authorship. It explains how theories of extended creativity can help navigate the conceptual challenges in applying traditional Lockean justifications to the authorship of AI output. Another chapter of the project proposes a necessary condition for human users to qualify as the author of AI-generated works: that the user and the AI system form an integrated “coupled system” characterized by two-way feedback loops. This paper provides the theoretical backdrop for adopting that criterion for authorship from a Lockean perspective.

Prof. Peter K. Yu, Texas A&M University School of Law

“Intellectual Property, Sustainable Development, and a New Social Contract”

In 1992, the World Commission on Environment and Development, known widely as the Brundtland Commission, called for efforts to ensure that development “meets the needs of the present without compromising the ability of future generations to meet their own needs.” Building on the Commission’s work and other similar efforts, the United Nations, in September 2015, launched the 2030 Agenda for Sustainable Development, which featured seventeen Sustainable Development Goals (SDGs) and 169 targets. The SDGs replaced the U.N. Millennium Development Goals, which were created following the adoption of the U.N. Millennium Declaration in September 2000.

One topic that has been underexplored in intellectual property literature is the linkage between intellectual property and sustainable development. This article aims to fill this lacuna. It begins by exploring the roles

played by the concept of sustainable development in the intellectual property framework. For analytical purposes, this concept is broadened to cover three sets of sustainability concerns: ecological, cultural, and global. The article then identifies, in turn, four sets of reforms that can be advanced to revamp the intellectual property framework: (1) substantive; (2) institutional; (3) complementary; and (4) ideational. These reforms will cover developments both within and outside the intellectual property framework. The article concludes by examining the roles played by endogenous and exogenous legal reforms in efforts to promote sustainable development in the intellectual property arena.