

33:2 BERKELEY TECHNOLOGY LAW JOURNAL

2018

Pages

365

to

606

Berkeley Technology Law Journal

Volume 33, Number 2

Production: Produced by members of the *Berkeley Technology Law Journal*.
All editing and layout done using Microsoft Word.

Printer: Joe Christensen, Inc., Lincoln, Nebraska.
Printed in the U.S.A.

The paper used in this publication meets the minimum requirements
of American National Standard for Information Sciences—
Permanence of Paper for Library Materials, ANSI Z39.48—1984.

Copyright © 2018 Regents of the University of California.
All Rights Reserved.



Berkeley Technology Law Journal
University of California
School of Law
3 Boalt Hall
Berkeley, California 94720-7200
btlj@law.berkeley.edu
<http://www.btlj.org>

BERKELEY TECHNOLOGY LAW JOURNAL

VOLUME 33

NUMBER 2

2018

TABLE OF CONTENTS

ARTICLES

| | |
|------------------------------------------------------------------------------------------------------------------------------------|-----|
| OPEN DATA, GREY DATA, AND STEWARDSHIP: UNIVERSITIES AT THE PRIVACY FRONTIER | 365 |
| <i>Christine L. Borgman</i> | |
| PATENT LITIGATION IN CHINA: CHALLENGING CONVENTIONAL WISDOM..... | 413 |
| <i>Renjun Bian</i> | |
| TRUST, BUT VERIFY: WHY THE BLOCKCHAIN NEEDS THE LAW | 487 |
| <i>Kevin Werbach</i> | |
| FINAL REPORT OF THE BERKELEY CENTER FOR LAW & TECHNOLOGY SECTION 101 WORKSHOP: ADDRESSING PATENT ELIGIBILITY CHALLENGES..... | 551 |
| <i>Jeffrey A. Lefstin, Peter S. Menell & David O. Taylor</i> | |

SUBSCRIBER INFORMATION

The *Berkeley Technology Law Journal* (ISSN1086-3818), a continuation of the *High Technology Law Journal* effective Volume 11, is edited by the students of the University of California, Berkeley, School of Law and is published in print three times each year (March, September, December), with a fourth issue published online only (July), by the Regents of the University of California, Berkeley. Periodicals Postage Rate Paid at Berkeley, CA 94704-9998, and at additional mailing offices. POSTMASTER: Send address changes to Journal Publications, University of California, Berkeley Law—Library, LL123 Boalt Hall—South Addition, Berkeley, CA 94720-7210.

Correspondence. Address all correspondence regarding subscriptions, address changes, claims for non-receipt, single copies, advertising, and permission to reprint to Journal Publications, University of California, Berkeley Law—Library, LL123 Boalt Hall—South Addition, Berkeley, CA 94705-7210; (510) 643-6600; JournalPublications@law.berkeley.edu. *Authors:* see section titled Information for Authors.

Subscriptions. Annual subscriptions are \$65.00 for individuals and \$85.00 for organizations. Single issues are \$30.00. Please allow two months for receipt of the first issue. Payment may be made by check, international money order, or credit card (MasterCard/Visa). Domestic claims for non-receipt of issues should be made within 90 days of the month of publication; overseas claims should be made within 180 days. Thereafter, the regular back issue rate (\$30.00) will be charged for replacement. Overseas delivery is not guaranteed.

Form. The text and citations in the *Journal* conform generally to the THE CHICAGO MANUAL OF STYLE (16th ed. 2010) and to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 20th ed. 2015). Please cite this issue of the *Berkeley Technology Law Journal* as 33 BERKELEY TECH. L.J. ____ (2018).

BTLJ ONLINE

The full text and abstracts of many previously published *Berkeley Technology Law Journal* articles can be found at <http://www.btlj.org>. Our site also contains a cumulative index; general information about the *Journal*; the BTLJ Blog, a collection of short comments and updates about new developments in law and technology written by BTLJ members; and *BTLJ Commentaries*, an exclusively online publication for pieces that are especially time-sensitive and shorter than typical law review articles.

INFORMATION FOR AUTHORS

The Editorial Board of the *Berkeley Technology Law Journal* invites the submission of unsolicited manuscripts. Submissions may include previously unpublished articles, essays, book reviews, case notes, or comments concerning any aspect of the relationship between technology and the law. If any portion of a manuscript has been previously published, the author should so indicate.

Format. Submissions are accepted in electronic format through the ExpressO and Scholastica online submission system. Authors should include a curriculum vitae and resume when submitting articles, including his or her full name, credentials, degrees earned, academic or professional affiliations, and citations to all previously published legal articles. The ExpressO submission website can be found at <http://law.bepress.com/expresso> and the Scholastica submission website can be found at <https://scholasticahq.com/law-reviews>.

Citations. All citations should conform to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 20th ed. 2015).

Copyrighted Material. If a manuscript contains any copyrighted table, chart, graph, illustration, photograph, or more than eight lines of text, the author must obtain written permission from the copyright holder for use of the material.

DONORS

The *Berkeley Technology Law Journal* and the Berkeley Center for Law & Technology acknowledge the following generous donors to Berkeley Law's Law and Technology Program:

Partners

COOLEY LLP

HOGAN LOVELLS

FENWICK & WEST LLP

ORRICK, HERRINGTON &
SUTCLIFFE LLP

WHITE & CASE LLP

Benefactors

COVINGTON & BURLING LLP

MORRISON & FOERSTER LLP

FISH & RICHARDSON P.C.

SIDLEY AUSTIN LLP

JONES DAY

WEIL, GOTSHAL & MANGES LLP

KIRKLAND & ELLIS LLP

WILMER CUTLER PICKERING HALE
AND DORR LLP

LATHAM & WATKINS LLP

WILSON SONSINI GOODRICH &
ROSATI

MCDERMOTT WILL & EMERY

WINSTON & STRAWN LLP

Corporate Benefactors

| | |
|--------------------------------------------------------------------------|--------------------------|
| BLOOMBERG LAW | LITINOMICS |
| COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION | MICROSOFT CORPORATION |
| CORNERSTONE RESEARCH | MOZILLA |
| FUTURE OF PRIVACY FORUM | NERA ECONOMIC CONSULTING |
| GOOGLE, INC. | NOKIA |
| HEWLETT FOUNDATION, THROUGH THE CENTER FOR LONG-TERM CYBERSECURITY | PALANTIR |
| INTEL | RLM TRIALGRAPHIX |
| INVENTIONSHARE | THE WALT DISNEY COMPANY |

Members

| | |
|--------------------------------------------------------|-------------------------------------------|
| BAKER BOTTS LLP | KILBURN & STRODE |
| BAKER & MCKENZIE LLP | KILPATRICK TOWNSEND & STOCKTON LLP |
| CROWELL & MORING | KNOBBE MARTENS LLP |
| DESMARAIS LLP | MORGAN, LEWIS & BOCKIUS LLP |
| DURIE TANGRI LLP | PAUL HASTINGS LLP |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP | ROPES & GRAY LLP |
| GTC LAW GROUP LLP & AFFILIATES | SIMPSON THACHER & BARTLETT LLP |
| HAYNES AND BOONE, LLP | TROUTMAN SANDERS LLP |
| HICKMAN PALERMO BECKER BINGHAM | TURNER BOYD LLP |
| IRELL & MANELLA LLP | VAN PELT, YI & JAMES LLP |
| KEKER VAN NEST & PETERS LLP | WEAVER AUSTIN VILLENEUVE & SAMPSON LLP |

BOARD OF EDITORS

2017–2018

Executive Board

Editor-in-Chief
CHRISTIAN CHESSMAN

Senior Articles Editors
ALICE CHI

Senior Executive Editor
TAMARA WIESEBRON

Managing Editor
DUSTIN VANDENBERG

JON MADDERN
ROBERT OLSEN

Senior Production Editor
KRISTOFER HATCH

Senior Scholarship Editor
JOE CRAIG

Senior Annual Review Editors
VANESSA ING
JOYCE LI

Senior Online Content Editor
CHANTE
WESTMORELAND

Editorial Board

Submissions Editors
CHRISTOPHER BROWN
AMIT ELAZARI

Production Editors
LOUISE DECOPPET
SAFFA KHAN
MEGAN MCKNELLY
CHELSEA MORI

Technical Editors
NADIA KALE
DANIEL LUECKE
AYN WOODWARD

Annual Review Editors
MARIA BELTRAN
NIR MAOZ

Notes & Comments Editors
BRITTANY JOHNSON ANDREW
NGUYEN

Symposium Editors
DARIUS DEHGHAN
JESSICA HOLLIS

Web & Technology Editors
JOHN HAZELWOOD
TED KANG

Online Content Editor
KATIE BURKHART

*LLM Member Relations
Editors*

Podcast Editor
ANTHONY BEDEL

JONATHAN DEBBI
MARTYNA SKRODZKA

Member Relations Editor
BARCLAY OUDERSLUYS

Alumni Relations Editor
ERICA SUN
KEVIN CHIU

External Relations Editor
BLAKE MEREDITH

TIANA BAHERI
ALEX BARATA
BRANDON CHAVEZ
CHRIS CHUANG
ERIC CHUANG

Articles Editors
KATHARINE CUMMINGS
MARK JAYCOX
YARDEN KAKON
LAURA KELLEY
AARON LEE
DINA LJEKPERIC

ANGELA LYONS-JUSTUS
CHARLES MILLER
BIHTER OZEDIRNE
AAMIR VIRANI
ELLE XUEMENG WANG

MEMBERSHIP

Vol. 33 No. 2

Associate Editors

| | | |
|-----------------------|-------------------------|------------------------------|
| LORRAINE ABDULHAD | KATIE GONZALEZ | PAYMANEH PARHAMI |
| NIYATI AHUJA | ELIZA GREEN | SANJANA PARIKH |
| ROBERTA AMORIM | ANUSHREE GUPTA | ANJELI PATEL |
| BLAKE ANDERSON | KAREN GRAEFIN VOM HAGEN | AYESHA RASHEED |
| CHELSEA ANDRE | MICHAEL HOMER | COLIN RAVELLE |
| NICHOLAS CALCATERRA | JONATHAN HUANG | COURTNEY REED |
| SAVANNAH CARNES | VICTORIA HUANG | NOELLE REYES |
| STELLA CHANG | CAROLINA JUVIN | ALYSE RITVO |
| DANIEL CHASE | ALEXANDER KROIS | AYELET ROSENTAL |
| INAYAT CHAUDHRY | HYUN KYU LEE | ELIZABETH FREEMAN ROSENZWEIG |
| GILBERT CHOI | YUAN LI | MIRANDA RUTHERFORD |
| RIYANKA ROY CHAUDHURY | JULIA LIPIZ | ARPITA SENGUPTA |
| NOMI CONWAY | DENISE LOUZANO | KELLY SERANKO |
| HUGO CUGNET | SAM MILLER | AISLINN SMALLING |
| TRENTON DAVIS | ARUNDHATI NAYUDU | WESLEY TIU |
| JOHN DETERDING | KATHERINE NOLAN | MEI XUAN |
| GRACE FERNANDEZ | DEBBIE OH | FAN YANG |
| YESENIA FLORES | LARA OLAFSDOTTIR | LI ZHANG |
| SREYA GANGULY | | EVAN ZIMMERMAN |

Members

| | | |
|-------------------------|-------------------|-------------------|
| DIANE AGUIRRE-DOMINGUEZ | CHANTE ELIASZADEH | PING LIU |
| ANANDITA ARORA | JORDAN FRABONI | SABRINA MCGRAW |
| LUKE BLACKETT | CHRIS GAO | FEI MO |
| NICHOLAS BOLDUC | YESOL HAN | CRISTINA MORA |
| LAUREN CARROLL | SPENCER HAZAN | SAISHRUTI MUTNEJA |
| CAROLINE YEN-RON CHEN | MEHTAB KHAN | SADAF NAKHAEI |
| SIYING CHEN | SINDHU KOMMI | SILVIA SEGADE |
| CONCORD CHEUNG | RYAN KWOCK | EMRE YUZAK |
| | | TIANYUAN ZHUANG |

BTLJ ADVISORY BOARD

JIM DEMPSEY
*Executive Director of the
Berkeley Center for Law & Technology*
U.C. Berkeley School of Law

ROBERT C. BERRING, JR.
Walter Perry Johnson Professor of Law
U.C. Berkeley School of Law

MATTHEW D. POWERS
Tensegrity Law Group, LLP

JESSE H. CHOPER
Earl Warren Professor of Public Law
U.C. Berkeley School of Law

PAMELA SAMUELSON
*Professor of Law & Information
and Faculty Director of the
Berkeley Center for Law & Technology*
U.C. Berkeley School of Law

REGIS MCKENNA
Chairman and CEO
Regis McKenna, Inc.

LIONEL S. SOBEL
Visiting Professor of Law
U.C.L.A. School of Law

PETER S. MENELL
*Professor of Law and Faculty
Director of the Berkeley Center
for Law & Technology*
U.C. Berkeley School of Law

LARRY W. SONSINI
Wilson Sonsini Goodrich & Rosati

ROBERT P. MERGES
*Wilson Sonsini Goodrich & Rosati Professor of
Law and Faculty
Director of the Berkeley Center
for Law & Technology*
U.C. Berkeley School of Law

MICHAEL STERN
Cooley LLP

DEIRDRE K. MULLIGAN
*Assistant Professor and Faculty Director of the
Berkeley Center for
Law and Technology*
U.C. Berkeley School of Information

MICHAEL TRAYNOR
Cobalt LLP

JAMES POOLEY
James Pooley, PLC

THOMAS F. VILLENEUVE
Gunderson Dettmer Stough Villeneuve
Franklin & Hachigian LLP

BERKELEY CENTER FOR LAW & TECHNOLOGY 2017–2018

Executive Director

JIM DEMPSEY

Faculty Directors

| | | |
|----------------------|------------------------|---------------------------------|
| KENNETH A. BAMBERGER | PETER S. MENELL | ANDREA ROTH |
| CATHERINE CRUMP | ROBERT P. MERGES | PAMELA SAMUELSON |
| CATHERINE FISK | DEIRDRE K. MULLIGAN | PAUL SCHWARTZ |
| CHRIS HOOFNAGLE | TEJAS N. NARECHANIA | JENNIFER M. URBAN |
| SONIA KATYAL | | MOLLY SCHAFFER VAN HOUWELING |

Fellows

| | |
|-------------------|--------------|
| KATHRYN HASHIMOTO | JOSHUA KROLL |
| GRAHAM RAVDIN | |

Staff Directors

| | |
|--------------|---------------|
| JANN DUDLEY | IRYS SCHENKER |
| RICHARD FISK | CLAIRE TRIAS |