

BJ Ard

University of Wisconsin Law School
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APPOINTMENTS AND EXPERIENCE

University of Wisconsin Law School,

Associate Professor of Law, July 2023–present;
Assistant Professor of Law, 2018–June 2023

Classroom Teacher of the Year Award, 2020–2021

Courses: Property, Copyright, Intellectual Property, Technology Law

Information Society Project, Yale Law School,

Affiliated Fellow, 2017–present;
Resident Fellow, 2013–2017

University of Arizona Rogers College of Law, Visiting Assistant Professor, 2017–2018

Courses: Contracts, E-Commerce

Yale Law School, Part-Time Acting Instructor, Spring 2016 & Spring 2017

Courses: Law and Disruptive Technology, Technology Law

Irell & Manella LLP, Associate, 2011–2013

U.S. Court of Appeals, Eleventh Circuit, Clerk to Hon. R. Lanier Anderson III, 2010–2011

EDUCATION

Yale Law School, New Haven, CT

Ph.D. in Law awarded May 2017

Doctoral Committee: Jack Balkin, Christine Jolls & Amy Kapczynski
Title of Dissertation: Essays on Law and Technology

J.D. awarded June 2010

Yale Law Journal, Managing Editor

Yale Journal of Law and Feminism, Book Reviews Editor

Yale Law and Policy Review, Technical Editor

Mortgage Foreclosure Litigation Clinic, Student Director

Stephen J. Massey Prize, awarded to student who best exemplifies values of the Jerome N.
Frank Legal Services Organization

University of Georgia, Athens, GA

M.A., Nonprofit Organizations, awarded May 2007

B.A., Women's Studies, *summa cum laude*, awarded May 2007

Foundation Fellowship; Phi Beta Kappa; Phi Kappa Phi; Blue Key; Golden Key

RESEARCH AND PUBLICATIONS

Treatise Sections

§ 20.05 (Copyright and Generative AI) in MELVILLE B. NIMMER & DAVID NIMMER, *NIMMER ON COPYRIGHT* (2024).

§§ 13F.02–13F.17 (Fair Use) in MELVILLE B. NIMMER & DAVID NIMMER, *NIMMER ON COPYRIGHT* (2023) (with David Nimmer).

§ 13.05[I] (*Oracle v. Google*) in MELVILLE B. NIMMER & DAVID NIMMER, *NIMMER ON COPYRIGHT* (2021) (with David Nimmer).

Articles, Essays, and Chapters

Copyright's Latent Space: Generative AI and the Limits of Fair Use, 110 *CORNELL LAW REVIEW* (forthcoming 2025).

Selected for 2024 Copyright Scholarship Roundtable, 2024 Legal Scholars Roundtable on AI, and Fifth Annual Art Law Works-in-Progress Colloquium.

Legal Responses to Techlaw Uncertainties, in *RESEARCH HANDBOOK ON LAW AND TECHNOLOGY* (Bartosz Brożek, Olia Kanevskaia & Przemysław Pałka eds., 2023) (with Rebecca Crootof) (invited chapter).

Creativity Without IP? Vindication and Challenges in the Video Game Industry, 79 *WASHINGTON & LEE LAW REVIEW* 1285 (2022).

- Selected for 2022 Harvard, Yale, Stanford Junior Faculty Forum and 2022 AALS Annual Meeting Emerging Voices in IP Panel.
- Excerpted: MARK A. LEMLEY & SONALI MAITRA, *VIDEO GAME LAW: AN OPEN ACCESS CASEBOOK* (2023).

Making Sense of Legal Disruption, 2022 *WISCONSIN LAW REVIEW FORWARD* 42 (2022) (essay for Law, Legal Institutions, and Technological Change).

Editor, J. Willard Hurst, *Technology and the Law: The Automobile*, 2022 *WISCONSIN LAW REVIEW* 463 (with William Novak).

Structuring Techlaw, 34 *HARVARD JOURNAL OF LAW & TECHNOLOGY* 347 (2021) (with Rebecca Crootof).

- Selected for 2020 Stanford, Harvard, Yale Junior Faculty Forum.
- Reviewed: Michael Madison, *No Machines in the Garden*, *JOTWELL* (Jan. 13, 2021).
- Excerpted: KAREN YEUNG & SOFIA RANCHORDÁS, *AN INTRODUCTION TO LAW AND REGULATION: TEXT AND MATERIALS* (forthcoming, Cambridge University Press).

Taking Access Seriously, 8 *TEXAS A&M LAW REVIEW* 225 (2021).

More Property Rules than Property? The Right To Exclude in Patent and Copyright, 68 *EMORY LAW JOURNAL* 685 (2019).

Beyond Neutrality: How Zero Rating Can (Sometimes) Advance User Choice, Innovation, and Democratic Participation, 75 MARYLAND LAW REVIEW 984 (2016).

Recommended resource in JAMES GRIMMELMANN, INTERNET LAW: CASES & PROBLEMS TEACHERS MANUAL (7th ed. 2017).

Notice and Remedies in Copyright Licensing, 80 MISSOURI LAW REVIEW 313 (2015).

Confidentiality and the Problem of Third Parties: Protecting Reader Privacy in the Age of Intermediaries, 16 YALE JOURNAL OF LAW & TECHNOLOGY 1 (2013).

Shorter Pieces

Response Essay, *Hybrid Innovation Regimes*, 109 IOWA LAW REVIEW ONLINE (forthcoming 2024) (reviewing Christopher B. Seaman & Thuan Tran, *Intellectual Property and Tabletop Games*, 107 IOWA LAW REVIEW 1615 (2022)).

Foreword: Willard Hurst's Unpublished Manuscript on Law, Technology, and Regulation, 2022 WISCONSIN LAW REVIEW 443 (with William Novak).

Book Review Essay, *The Not-so-great Transformation*, 18 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 1013 (2020) (reviewing JULIE COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATIONAL CAPITALISM (2019)).

Librarians as Privacy Advocates, 13 I/S: A JOURNAL OF LAW & POLICY FOR THE INFORMATION SOCIETY 161 (2016) (invited symposium essay).

The Limits of Industry-Specific Privacy Law, 51 IDAHO LAW REVIEW 607 (2015) (invited symposium essay).

Comment, *Interpreting by the Book: Legislative Drafting Manuals and Statutory Interpretation*, 120 YALE LAW JOURNAL 185 (2010).

Amicus Briefs

Brief for Yale Law School Information Society Project and Affiliated Scholars of IP and Free Expression Law as Amici Curiae, *Flo & Eddie, Inc. v. Pandora Media, Inc.*, No. S240649 (California Supreme Court, filed Jan. 12, 2018) (primary drafter).

Brief for Yale Law School Information Society Project and Affiliated Scholars of IP and Free Expression Law as Amici Curiae, *Flo & Eddie, Inc. v. Pandora Media, Inc.*, No. 15-55287 (Ninth Circuit Court of Appeals, filed Sept. 9, 2015) (primary drafter).

Brief for Floyd Abrams Institute and First Amendment Scholars as Amici Curiae, *In re National Security Letter*, Nos. 13-15957, 13-16731 (Ninth Circuit Court of Appeals, filed Mar. 31, 2014) (with ISP resident and visiting fellows).

Brief for Los Angeles County Bar Association et al. as Amici Curiae Supporting the Applicant, *In re Garcia on Admission*, 58 Cal. 4th 440 (California Supreme Court 2014) (with Justice Carlos R. Moreno), available at <http://www.courts.ca.gov/18822.htm>.

Blog Posts

The Case for “Technology Law,” NEBRASKA GOVERNANCE & TECHNOLOGY CENTER BLOG (Dec. 16, 2020), <https://ngtc.unl.edu/blog/case-for-technology-law> (with Rebecca Crootof).

The Future of Frictionless Sharing: Facebook’s New Audio-Identification Feature, BALKINIZATION (June 16, 2014), <http://balkin.blogspot.com/2014/06/the-future-of-frictionless-sharing.html>.

GRANTS

National Science Foundation—\$1,200,000 (2023–2027)

Principal Investigator with NYU Tandon School of Engineering colleague Justin Cappos on Award # 2,247,830, “Defending the Supply Chain of Democracy: Towards a Cryptographically Verified and Authenticated Network of Laws.”

National Science Foundation—\$3,000,000 (2022–2027)

Core Faculty alongside principal investigators at University of Wisconsin for NSF Research Traineeship Award # 2,152,163, “Integrating Robots into the Future of Work.”

University of Wisconsin Office of the Vice Chancellor for Research and Graduate Education

Funded through competitive, campus-wide process for “Purpose in Copyright,” \$29,413 (2023–2024), “Fair Use as Penalty Default,” \$17,597 (2022–2023), and “The Law of Disruption: The Impact of New Technologies on Privacy Law,” \$16,769 (2021–2022).

SELECTED SERVICE

Legal Profession

Seventh Circuit Pattern Civil Jury Instructions Working Group, Trademark & Copyright Subcommittee, Fall 2022.

Committee Service

- Appointments Committee, Member, Fall 2023–present.
- First-Generation Student Initiatives Working Group, Member, Fall 2022–present.
- Admissions and Financial Aid Committee, Member, Fall 2019–Spring 2020, Fall 2022–present.
- Hastie Committee, Chair, Summer 2020–Spring 2021, Spring 2023–Summer 2023; Member, Summer 2019–Spring 2020, Fall 2022–Spring 2023.
- Outcomes and Assessments Committee, Member, Fall 2021–Spring 2022.
- Kastenmeier Lecture Committee, Member, Fall 2020–Fall 2021.
- Inclusive Community Strategic Plan Working Group, Member, Summer 2021.
- Excellence in Alternative Delivery Working Group, Member, Summer 2020.
- Clerkship Committee, Member, Fall 2018–Spring 2019.

Student Advising

- Moot Court Faculty Advisor, Giles S. Rich Memorial IP Moot Court Competition, Spring 2024; Irving R. Kaufman Memorial Securities Law Moot Court Competition, Spring 2021.

- Faculty Advisor, Intellectual Property Student Organization, Fall 2022–present; Technology Law Student Association, Fall 2019–present.
- Judge, Cardozo BMI Moot Court Competition, Spring 2021.

SELECTED PRESENTATIONS

Copyright’s Latent Space: Generative AI and the Limits of Fair Use (prior working title: “Copyright’s Latent Space: From Fair Use to Generative Art”),

- Fifth Annual Art Law Works-in-Progress Colloquium, OSU Law (May 2024),
- Copyright Scholarship Roundtable, University of Pennsylvania Law School (May 2024),
- Legal Scholars Roundtable on AI, Emory Law School (virtual attendee) (Apr. 2024),
- A Decade of Growth and Transformation in Intellectual Property and Technology Law, Texas A&M Law School (Feb. 2024) (invited speaker),
- Works-In-Progress in IP Colloquium, Santa Clara Law School (Feb. 2024),
- University of Wisconsin Law School Faculty Workshop (Dec. 2023),
- University of Wisconsin Law School Technology Law Student Association (Nov. 2023),
- INTEGRATE Colloquium, University of Wisconsin (Sept. 2023),
- University of Georgia Law School Faculty Workshop (Sept. 2023).

Copyright & Generative AI: Lessons from the Latent Space (invited speaker),
LexisNexis webinar (May 2024).

Creativity Without IP? Vindication and Challenges in the Video Game Industry (prior working title: “Competition With and Without IP in the Video Game Industry”),

- Texas A&M Law School, Digital Copyright Seminar (online) (Mar. 2022 & Mar. 2024) (guest lectures),
- International Gaming: Laws and Regulations around Games in the Digital Era (Durham Law School, U.K.) (Sept. 2022) (invited speaker),
- 2022 Harvard, Yale, Stanford Junior Faculty Forum, Harvard Law School (June 2022),
- University of Montana Law School, Advanced Issues in IP Seminar (online) (Mar. 2022) (guest lecture),
- University of Wisconsin Law School Faculty Workshop (Jan. 2022),
- AALS Annual Conference, Emerging Voices in IP Panel (online) (Jan. 2022),
- Texas A&M Workshop for Emerging Scholars in IP and Technology (Nov. 2021) (invited speaker),
- Wisconsin State Bar IP & Technology Law Section, IP Academy (online) (Sept. 2021) (invited speaker),
- Intellectual Property Scholars Conference, Berkeley School of Law, Cardozo School of Law, DePaul University College of Law, and Stanford Law School (online) (Aug. 2021),
- Junior IP Scholars Association Workshop (online) (July 2021),
- Yale ISP Law & Technology Speaker Series (online) (Apr. 2021) (guest lecture),
- Junior Law & Tech Scholars Workshop (online) (Feb. 2021),
- Works-In-Progress in IP Colloquium, American University Washington College of Law, Texas A&M University School of Law, and University of Utah S.J. Quinney College of Law (online) (Feb. 2021),

- University of Wisconsin Law School Intellectual Property Student Organization and Technology Law Student Association (online) (Jan. 2021),
- Internet Law Works-In-Progress Symposium, Santa Clara Law School (Mar. 2019).

Antitrust Panel (invited speaker),

More Than Just a Game, Stanford Law School (Mar. 2024).

Warhol x Generative AI (invited speaker),

Irell & Manella Sleep Learning Series (online) (Aug. 2023).

The Concept Formerly Known as Transformative Use: *Warhol Foundation v. Goldsmith*,

- Summer Scholarly Series, University of Wisconsin Law School (Aug. 2023),
- Wisconsin State Bar IP & Technology Law Section, IP Academy (July 2023) (invited speaker).

What Intellectual Property/Technology Lawyers Should Know About Artificial Intelligence (invited panelist),

Wisconsin State Bar IP & Technology Law Section, IP Academy (July 2023).

Generative AI and the Law: A Case Study in DALL-E 2 and Fair Use,

University of Wisconsin Law School Technology Law Student Association (Mar. 2023).

Legal Responses to Techlaw Uncertainties (invited speaker),

Online Symposium for *Research Handbook on Law and Technology* (Nov. 2022).

Willard Hurst's Unpublished Manuscript on Law, Technology, and Regulation,

- University of Wisconsin Law School Technology Law Student Association (Oct. 2022),
- Yale ISP 25th Year Reunion and Conference (Oct. 2022).

UW Law Talk on *Dobbs v. Jackson Women's Health Organization* (panelist),

UW Law School (online) (May 2022).

Making Sense of Legal Disruption,

Law, Legal Institutions, and Technological Change, University of Wisconsin Law School (Apr. 2022) (conference host).

***Google v. Oracle*,**

- University of Wisconsin Law School Technology Law Student Association (Mar. 2022),
- Summer Scholarly Series, University of Wisconsin Law School (online) (Sept. 2021).

Structuring TechLaw (with Rebecca Crootof),

- Georgetown Law, Global Tech Law Seminar (online) (Feb. 2022) (guest lecture),
- 2020 Stanford, Harvard, Yale Junior Faculty Forum (online) (Aug. 2020),
- Privacy Law Scholars Conference, GW Law School (online) (June 2020),
- Law & Tech Workshop, Brooklyn Law School (online) (Apr. 2020).

Moderator, Panel on Tax, Patents, and Businesses, with presentations by Jose Atilas, Samuel Fritz & Elizabeth Hoffman,

Midwest Law and Society Retreat, University of Wisconsin Law School (Nov. 2021).

Moderator, Patents and the Public Interest in Pandemic Vaccine Policy,

2021 Robert W. Kastenmeier symposium featuring Daniel DiNapoli, Andrei Iancu & Lisa Larrimore Ouellette (online) (Oct. 2021).

Legal Education Opportunities Orientation Faculty Panel,

University of Wisconsin Law School (Aug. 2021).

An Institutional Account of Legal Disruption,

- University of Wisconsin Law School Faculty Workshop (online) (Dec. 2020),
- Texas A&M University School of Law Faculty Workshop (online) (Oct. 2020).

What is Law and Technology? (invited speaker, podcast symposium),

Nebraska Governance & Technology Center Tech Refactored podcast (Dec. 2020).

Privacy Law, Disrupted: When New Technologies Pose Hard Questions (invited speaker),

“Privacy in 2020? A Civil and Criminal Exploration of Privacy Law and Practice,” organized by the Wisconsin Department of Justice (Aug. 2020).

Taking Access Seriously (prior working titles: “Access Markets in Copyright,” “Fair Use as Penalty Default”),

- University of Wisconsin Law School Faculty Workshop (Feb. 2020),
- BYU Law School Intellectual Property Colloquium (Oct. 2019) (guest lecture),
- Junior IP Scholars Association Workshop, GW University Law School (May 2019),
- Marquette University Law School Intellectual Property Colloquium (Mar. 2019) (guest lecture),
- University of Wisconsin Law School Faculty Workshop (Feb. 2019),
- University of Minnesota Law School Faculty Workshop (Nov. 2018) (junior faculty exchange),
- Yale ISP 20th Year Reunion and Conference (Oct. 2017),
- Works-In-Progress in IP Colloquium, Boston University School of Law (Feb. 2017),
- Internet Law Works-in-Progress Symposium, New York Law School (Mar. 2016),
- Yale PhD in Law Paper Workshop, Yale Law School (Feb. 2016),
- Yale ISP Fellows Workshop, Yale Law School (Jan. 2016).

Moderator, Panel on Building an Entrepreneurial and Technology Commercialization Ecosystem in a University Setting—from Bayh-Dole to Business Creation in the U.S. and China,

China and U.S. Intellectual Property Forum at UW-Madison (Nov. 2019).

From Patents to Products: Key Elements for Commercial Success (invited speaker),

Second China-U.S. IP Forum, Nanjing University (May 2019).

Moderator, Panel on Corruption, Governance, and Industries, with presentations by Eugene McCarthy, Matthew Nesvet, and Ben Power,

Midwest Law and Society Retreat, University of Wisconsin Law School (Oct. 2018).

The Agency Costs of Agent-Side Information Problems,

Internet Law Works-In-Progress Symposium, New York Law School (Mar. 2018).

More Property Rules than Property? The Right To Exclude in Patent and Copyright,

- University of Arizona College of Law Enrichment Speaker Series (Dec. 2017),
- University of Wisconsin Law School Faculty Workshop (Nov. 2017),
- University of Washington Law School Faculty Workshop (Dec. 2016),
- IP Scholars Conference, Stanford Law School (Aug. 2016),
- SEALS Prospective Law Teachers Workshop, Amelia Island, Florida (Aug. 2016),
- Works-In-Progress in IP Colloquium, UW School of Law (Feb. 2016),
- Yale ISP Fellows Workshop, Yale Law School (Dec. 2015),
- Yale PhD in Law Paper Workshop, Yale Law School (Aug. 2015).

Net Neutrality and Privacy Under Trump's FCC (invited speaker),

"Challenges of Advanced Technology and A.I.," New Haven, CT (June 2017).

How To Regulate a Robot (invited speaker),

Science on Screen Series, Real Art Ways, Hartford, CT (May 2017).

Communicating Copyright Terms in Digital Transactions to Consumers (invited panelist),

Workshop on Consumer Messaging in Connection with Online Transactions Involving Copyrighted Works, U.S. Patent & Trademark Office (Apr. 2017).

Moderator, Conversation with Travis LeBlanc, Chief of the Obama Administration's FCC Enforcement Bureau,

Yale Law School (Mar. 2017).

Privacy Law Disrupted,

Internet Law Works-In-Progress Symposium, Santa Clara Law School (Mar. 2017).

Librarians as Privacy Advocates (invited symposium contributor),

"Libraries and Privacy," Future of Libraries in the Digital Age, OSU Law (Mar. 2016).

Beyond Neutrality: How Zero Rating Can (Sometimes) Advance User Choice, Innovation, and Democratic Participation,

- Third Freedom of Expression Scholars Conference, Yale Law School (May 2015),
- Yale PhD in Law Paper Workshop, Yale Law School (Feb. 2015),
- Yale ISP Ideas Lunch, Yale Law School (Dec. 2014),
- Albany Law School Gathii Faculty Workshop Series (Nov. 2014),
- Yale ISP Fellows Workshop, Yale Law School (Oct. 2014).

The Limits of Industry-Specific Privacy Law (invited symposium contributor),

"Surveillance in Cyberspace by Private Actors," Idaho College of Law (Apr. 2015).

Law of Disruption,

Yale PhD in Law Paper Workshop, Yale Law School (Apr. 2015).

Notice and Remedies in Copyright Licensing,

- IP Scholars Roundtable, Drake Law School (March 2014),
- Works-In-Progress in IP Colloquium, Santa Clara Law School (Feb. 2014),
- Cyberscholars Working Group, Yale Law School (Jan. 2014),
- Yale ISP Fellows Workshop, Yale Law School (Nov. 2013).

How To Prepare for the Bar Exam (invited panelist),
Yale Law School (Mar. 2014).

Drone Innovation Law and Policy (panelist),
Drones & Aerial Robotics Conference, NYU Law School (Oct. 2013).

BAR ADMISSIONS

California, Ninth Circuit