

BTLJ 2017 – 2018 YEAR IN REVIEW

This is the inaugural post in an annual series to be published by the outgoing Editor-in-Chief of BTLJ reviewing the past year's triumphs, tribulations, and accomplishments. The Year in Review is designed to honor the hard work done by the BTLJ team, to recognize the excellence of the scholars who choose to publish with us, and to highlight valuable projects that BTLJ has engaged in for the public and future generations of lawyers.

Christian F. Chessman

2017–2018 Editor-in-Chief | Berkeley Technology Law Journal

Introduction

The past year at the Berkeley Technology Law Journal can only be described as a wonderful struggle. After inheriting a relatively sizeable backlog, the 2017–2018 BTLJ editorial board successfully published a full nine issues—a total fifty-two articles—spanning nearly every subject area in intellectual property law. While doing so, BTLJ hit a number of important milestones and began a number of important projects that deserve to be shared publicly. I share them below.

Quantitative Accomplishments

Rankings—BTLJ returned to its place as the #1-ranked technology law journal in the United States after having dipped to second place in the 2016 Washington and Lee rankings. Excitingly, BTLJ also entered the top 50 *overall* rankings for law journals, placing at #47 for 2017.

Submissions—BTLJ received a record-breaking 1,252 submissions through Scholastica and ExpressO, the highest our journal has received in any given year. Of those submissions, BTLJ publishes approximately twelve articles per year, in addition to those received as part of the annual Symposium and student-driven Annual Review of the Law.

Court and Government Citations—BTLJ remains one of the most highly-cited journals by courts as well. In the past year, BTLJ was cited by approximately a dozen federal district courts, as well as four state Supreme Courts, three Circuit Courts of Appeals, and two citations by the United States Supreme Court. A full listing of the cases (and the articles cited by the courts) is included at the end of the post. BTLJ was also cited by Makan Delrahim, the Assistant Attorney General for Antitrust at the U.S. Department of Justice, as justification for DOJ's approach to examining the relationship between antitrust and FRAND agreements. We are happy to see the scholarship in our journal making a difference in the judiciary.

Activities and Projects

Commentary on the Proposed Small Claims Copyright Court—in a project spearheaded by Professor Pamela Samuelson and BCLT Copyright Research Fellow Kathryn Hashimoto, BTLJ published an online [Commentary on the proposed small claims copyright court](#) that was recently proposed in Congress in the [CASE Act](#). The Commentary includes an empirical analysis of a comparable copyright court in the U.K., constitutional analysis of the Article III implications of establishing such a court, and a regulatory analysis about how best to design such a court's administrative architecture.

BTLJ Podcast—to offer a unique forum for examining technology scholarship, [BTLJ established a podcast](#) that interviews scholars, practitioners, government officials, and even litigants. The podcast lets us take a

deeper dive into some of the scholarship we published (such as [our interview with scholar and Baker & McKenzie partner Lothar Determann](#)), or even to examine normative issues that BTLJ believes deserve discussion among scholars ([such as the importance and nature of Native American intellectual property in intangible cultural artifacts](#)). The success of the podcast owes a major thank-you to our Senior Online Content Editor Chante Westmoreland and our Podcast Editor Tony Bedel. If you believe you, or someone you know, would be a good fit for an interview with our podcast, please reach out to btlj@law.berkeley.edu.

BTLJ Scholars Program—in recognition that technology law is often unduly insular, and in an effort to support incoming Berkeley Law students with a demonstrated interest in technology law, BTLJ established the BTLJ Scholars Program. This is a first-of-its-kind scholarship—no other law journal in the country sponsors the tuition and fees of incoming students. Our goal is to support technology-law minded students who otherwise would not have the means to attend Berkeley Law, and to ensure adequate representation in a relatively-privileged area of practice. Our fundraising efforts have already been very successful, and we hope to begin funding students in the coming academic year. If you would like to donate to the BTLJ Scholars Program, please reach out to btlj@law.berkeley.edu.

LLM Editors—because Berkeley Law is increasingly a forum for L.L.M. students, BTLJ established two editorial-board level positions for LLM students. We welcome our international colleagues and designed the positions to ensure that BTLJ fully represents the diversity reflected in our student body. Congratulations to Martyna Skrodzka and Jonathan Debbi, our inaugural LLM Editors!

CASE CITATIONS

State Supreme Courts

State v. Copes, 454 Md. 581, 588 n.8 (2017) (Maryland) (citing Stephanie K. Pell & Christopher Soghoian, *Can You See Me Now?: Towards Reasonable Standards for Law Enforcement Access to Location Data That Congress Could Enact*, 27 BERKELEY TECH. L.J. 117, 131–32 (2012)).

State v. Linson, 896 N.W.2d 656, 661 (S.D. 2017) (South Dakota) (citing Ty E. Howard, *Don't Cache Out Your Case: Prosecuting Child Pornography Possession Laws Based on Images Located in Temporary Internet Files*, 19 BERKELEY TECH. L.J. 1227, 1257 (2004)).

Forshee v. Neuschwander, 381 Wis. 2d 757, 789 n.5 (2018) (Wisconsin) (citing Vanessa Katz, *Regulating the Sharing Economy*, 30 BERKELEY TECH. L.J. 1067 (2015)).

Adelson v. Harris, 402 P.3d 665, 669 (Nev. 2017) (Nevada) (citing Mark Sableman, *Link Law Revisited: Internet Linking Law at Five Years*, 16 BERKELEY TECH. L.J. 1273, 1276 (2001)).

Federal Circuit

Praxair Distribution, Inc. v. Mallinckrodt Hosp. Prod. IP Ltd., 890 F.3d 1024, 1038 (Fed. Cir. 2018) (citing Thomas F. Cotter, *A Burkean Perspective on Patent Eligibility*, 22 BERKELEY TECH. L.J. 855 (2007)).

Third Circuit

United States v. Stimler, 864 F.3d 253, 278 (3d Cir. 2017) (citing Stephanie K. Pell & Christopher Soghoian, *Can You See Me Now?: Toward Reasonable Standards For Law Enforcement Access to Location Data That Congress Could Enact*, 27 BERKELEY TECH. L.J. 117, 132 (2012)).

Ninth Circuit

Dallas Perfect 10, Inc. v. Giganews, Inc., 847 F.3d 657, 666 (9th Cir.), *cert. denied*, 138 S. Ct. 504, 199 L. Ed. 2d 385 (2017) (citing Dallas T. Bullard, Note, *The Revolution Was Not Televised: Examining Copyright Doctrine After Aereo*, 30 BERKELEY TECH. L.J. 899, 922–23 (2015)).

SCOTUS

Carpenter v. United States, 138 S. Ct. 2206, 2263 (2018) (Gorsuch, J. dissenting) (citing Richard A. Epstein, *Privacy and the Third Hand: Lessons From the Common Law of Reasonable Expectations*, 24 BERKELEY TECH. L.J. 1199, 1204 (2009) and Erin Murphy, *The Case Against the Case Against the Third-Party Doctrine: A Response to Epstein and Kerr*, 24 BERKELEY TECH. L.J. 1239, 1252 (2009)).

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