

36:1 BERKELEY TECHNOLOGY LAW JOURNAL

2021

Pages

305

to

616

Berkeley Technology Law Journal

Volume 36, Number 1

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 © 2021 Regents of the University of California.
All Rights Reserved.

Berkeley Technology Law Journal
University of California
School of Law
3 Law Building
Berkeley, California 94720-7200
editor@btlj.org
<https://www.btlj.org>



BERKELEY TECHNOLOGY LAW JOURNAL

VOLUME 36

NUMBER 1

2021

TABLE OF CONTENTS

ARTICLES

PRIVACY SELF-HELP	305
<i>Steven H. Hazel</i>	
ANTITRUST IN THE CONSUMER PLATFORM ECONOMY: HOW APPLE HAS ABUSED ITS MOBILE PLATFORM DOMINANCE	353
<i>Shili Shao</i>	
WHY 72 INTELLECTUAL PROPERTY SCHOLARS SUPPORTED GOOGLE'S COPYRIGHTABILITY ANALYSIS IN THE ORACLE CASE.....	413
<i>Pamela Samuelson & Catherine Crump</i>	
TRADEMARKS AS SURVEILLANCE TRANSPARENCY.....	439
<i>Amanda Levendowski</i>	
PLATFORMS, ENCRYPTION, AND THE CFAA: THE CASE OF <i>WHATSAPP V.</i> <i>NSO GROUP</i>	469
<i>Jonathon W. Penney & Bruce Schneier</i>	
A PENNY FOR THEIR CREATIONS—APPRIISING USERS' VALUE OF COPYRIGHTS IN THEIR SOCIAL MEDIA CONTENT	511
<i>Uri Y. Hacohen, Amit Elazari & Talia Schwartz-Maor</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 36 BERKELEY TECH. L.J. ____ (2021).

BTLJ ONLINE

The full text and abstracts of many previously published *Berkeley Technology Law Journal* articles can be found at <https://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 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 Scholastica submission website can be found at <https://btlj.scholasticahq.com/for-authors>.

Citations. All citations should conform to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 21st ed. 2020).

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

WHITE & CASE LLP

Benefactors

BAKER BOTTS LLP

MORRISON & FOERSTER LLP

COVINGTON & BURLING LLP

ORRICK HERRINGTON & SUTCLIFFE
LLP

FENWICK & WEST LLP

PAUL HASTINGS LLP

FISH & RICHARDSON P.C.

SIDLEY AUSTIN LLP

KIRKLAND & ELLIS LLP

WEIL, GOTSHAL & MANGES LLP

LATHAM & WATKINS LLP

WILMER CUTLER PICKERING HALE
AND DORR LLP

MCDERMOTT WILL & EMERY LLP

WILSON SONSINI GOODRICH &
ROSATI

WINSTON & STRAWN LLP

Corporate, Government, Individual, and Foundation Sponsors

ATLASSIAN	LITINOMICS, INC.
BOIES SCHILLER & FLEXNER LLP	MARKS & CLERK LLP
CISCO SYSTEMS, INC.	MICROSOFT CORPORATION
THE CITIZEN LAB	MOZILLA CORPORATION
COMCAST CABLE	NOKIA CORPORATION
CORNERSTONE RESEARCH	PALANTIR TECHNOLOGIES
DARTS IP	QUALCOMM INCORPORATED
GEN LAW FIRM	RLM TRIALGRAPHIX
GOODWIN PROCTER LLP	STARZ
GOOGLE INC.	TYSON & MENDES
INTEL CORPORATION	UNIFY CONSULTING
INVENTIONSHARE INC.	VIA LICENSING CORPORATION
JENNER & BLOCK	VYNL
KILBURN & STRODE	WESTERN DIGITAL

Members

BAKER & MCKENZIE LLP

KILPATRICK TOWNSEND &
STOCKTON LLP

BEIJING EAST IP

KNOBBE MARTENS LLP

DESMARAIS LLP

MORGAN LEWIS & BROCKIUS

DURIE TANGRI LLP

ROBINS KAPLAN, MILLER & CIRESI
LLP

GREENBERG TRAURIG LLP

TENSEGRITY LAW GROUP LLP

GTC LAW GROUP LLP & AFFILIATES

VAN PELT, YI & JAMES LLP

HAYNES AND BOONE, LLP

WANHUIDA INTELLECTUAL
PROPERTY

IRELL & MANELLA LLP

WILLKIE FARR & GALLAGHER LLP

KEKER VAN NEST & PETERS LLP

WOMBLE BOND DICKINSON LLP

BOARD OF EDITORS

2020–2021

Executive Board

Editor-in-Chief
S. EMMA LEE

Senior Articles Editors
MUHTADI CHOUDHURI
MATT CHUNG
MARTA ROCHA

Senior Executive Editor
HARRISON GERON

Senior Production Editor
HAILEY YOOK

Managing Editor
MADISON BOWER

Senior Scholarship Editor
ANGELA GRIGGS

Senior Student Publication Editors
WALTER MOSTOWY
KEVIN YANG

Senior Online Content Editor
ALLAN E. HOLDER

Editorial Board

Submissions Editors
JOHN BATOHA
GRACE MCFEE
THOMAS HORN

Production Editors
ROBIN CHANG
JOELLE FERGUSON
EMILY ROBERTS

Technical Editors
SALLY CHOI
MIN JUNG “MJ” HAN
ALEX HARVEY
JOSEPH KINGERSKI

Student Publication Editors
JENNIFER CHUNG
ANUJ EZEKIEL

Notes & Comments Editors
LOC HO
SHREYA SANTHANAM

Symposium Editors
MARGARET LYNCH
DEBBIE MOSLEY

Web & Technology Editors
KARNIK HAJJAR
HENRY METRO

Podcast Editors
HALEY BROUGHTON
ANDY ZACHRICH

LLM Editor
MARIO MARTINEZ

Member Relations Editor
RACHEL WILSON

Alumni Relations Editor
ARMBIEN SABILLO

External Relations Editor
GRACE (HJ) KIM

Commentaries Editor
VERONICA BOGNOT

LIAM AZARTASH
KEVIN CHEN
NATALIE T. CRAWFORD
JAMESON DAVIS
JASON FRANCIS

Articles Editors
JEFFREY JACOBSEN
TOM JAMES
JOSEPH KROON
CHARLIZE MORGAN
ALEX MCKENZIE
SHALEV NETANEL

YEMAJ SHEIK
DAKOTA SNEED
BLAINE VALENCIA
SOPHIA WALLACH
ALI ZARRABI

MEMBERSHIP

Vol. 36, Design Patents Symposium

Associate Editors

JONATHAN BAER	KAVYA DASARI	FATIMA LADHA
BOGDAN BELEI	KURT FREDERICKSON	WYATT LARKIN
SETH BERTOLUCCI	RAFI GINSBURG	MATT SARDO
CONNOR BOEHM	REBECCA HO	SARA TSAI
HALEY BROUGHTON	NATHANIEL KELLERER	JESSICA WANG
LUCILLE DAI-HE	CONNOR KENNEDY	

Members

JARED ABES	EDUARDO FIGUEROA	ROSS MOODY
RICH ABIDOR	COLE GINGRICH	ERIN MOORE
IAN AFLAGUE	KHASH GOSHTASBI	GAYATRI PARANJAPE
TIFFANY ALLEN	SAVANNAH GROSSARTH	JUSTINE MCCARTHY POTTER
SCOTT ARONIN	DYLAN HOULE	BREANNA QIN
PIERRE BARTHELEMY	CHRISTINA JOHNSON	JENNY QUANG
MIKE BEHLEN	NATALIE KALISS	MEIRAM RAKHIMBEKOV
BROOKE D'AMORE BRADLEY	ROGER KANG	LIZ FREEMAN ROSENZWEIG
HANNAH BROWN	CHRISTIAN KNIPFER	BARBARA ROWINSKA
ZHIWEI CAI	PAULINE LE	CATIE SAKURAI
KEVIN CHIU	DIANA LEE	WILL SERIO
MACKENZIE CONCEPCION	GARY LEE	EVA SPITZEN
ALEXA DAUGHERTY	VALENTINO LUCINI	MEGHAN SULLIVAN
VICTORIA DIPLA	MATTHEW LUEVANO	JENNIFER SUN
MADELINE ELKINS	MAHAA MAHMOOD	RACHEL THOMPSON
CLINTON EWELL	BLAINE MANIRE	MICHELLE WONG
ROBERT FAIRBANKS	THOMAS MATTES	DIMING XU
CITRA FATIHAH	ISHITA MATTOO	ANGELA ZHAO
KAYLA FEDLER	ALISTAIR MCINTYRE	MICHELLE ZIPERSTEIN
	DANIEL METEER	

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, Emeritus
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
*Richard M. Sherman Distinguished 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
*Professor of Law, Emeritus and Director of the
International Entertainment & Media Law
Summer Program in London*
Southwestern University School of Law

PETER S. MENELL
*Koret 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 2020–2021

Executive Director

JIM DEMPSEY

Faculty Directors

KENNETH A. BAMBERGER	PETER S. MENELL	PAUL SCHWARTZ
CATHERINE CRUMP	ROBERT P. MERGES	ERIK STALLMAN
CATHERINE FISK	DEIRDRE K. MULLIGAN	JENNIFER M. URBAN
CHRIS HOOFNAGLE	TEJAS N. NARECHANIA	MOLLY S. VAN HOUWELING
SONIA KATYAL	ANDREA ROTH	REBECCA WEXLER
ORIN KERR	PAMELA SAMUELSON	

Fellow

KATHRYN HASHIMOTO	YUAN HAO
-------------------	----------

Staff

MARK COHEN	RICHARD RISK
NATALIE COLETTA	MATTHEW RAY
JANN DUDLEY	IRYS SCHENKER