PUBLICATIONS

Books


LEGISLATION: STATUTORY INTERPRETATION IN THEORY AND IN PRACTICE, with David Louk (forthcoming Foundation Press 2020)

CAMBRIDGE HANDBOOK ON INTERNATIONAL AND COMPARATIVE TRADEMARK LAW, Editor with Prof. Irene Calboli (forthcoming, Cambridge University Press 2020)

DEEP DIVE: BURROW-GILES LITHOGRAPHING V. SARONY (US 1884) COPYRIGHT PROTECTION FOR PHOTOGRAPHS AND CONCEPTS OF AUTHORSHIP IN AN AGE OF MACHINES (forthcoming Twelve Tables Press 2020)

COPYRIGHT: CASES AND MATERIALS, with Prof. R.A. Gorman and Prof. R.A. Reese (Foundation Press 9th edition 2017); 2019 Case Supplement with Prof. R.A. Reese


INTELLECTUAL PROPERTY AT THE EDGE: THE CONTESTED CONTOURS OF IP, Editor, with Prof. Rochelle Dreyfuss (Cambridge University Press 2014)

COPYRIGHT LAW: CONCEPTS AND INSIGHTS, with Prof. Robert A. Gorman (Foundation Press 2012)

COPYRIGHT AND PIRACY: AN INTERDISCIPLINARY CRITIQUE, Editor, with Prof. Lionel Bently and Dr. Jennifer Davis (Cambridge University Press 2010)

TRADE MARKS AND BRANDS: AN INTERDISCIPLINARY CRITIQUE, Editor, with Prof. Lionel Bently and Dr. Jennifer Davis (Cambridge University Press 2008)

INTELLECTUAL PROPERTY STORIES, Editor, with Prof. Rochelle Dreyfuss (Foundation Press, 2005)
FOUNDATIONS OF INTELLECTUAL PROPERTY LAW, Editor, with Prof. R.P. Merges (Foundation Press, 2004)

ADJUNCTS AND ALTERNATIVES TO COPYRIGHT: PROCEEDINGS OF THE 2001 CONGRESS OF THE ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE, Editor, with June Besek, Esq. (Kernochan Center for Law, Media and the Arts, 2002)


Book Chapters


Liability for Hyperlinking, with Prof. Alain Strowel, in Tanya Aplin, ed., RESEARCH HANDBOOK ON IP AND DIGITAL TECHNOLOGIES (forthcoming, Edward Elgar 2020)


The Berne Convention – historical and institutional aspects, with Prof. Sam Ricketson, in INTERNATIONAL INTELLECTUAL PROPERTY: A HANDBOOK OF CONTEMPORARY RESEARCH, Daniel Gervais, ed. (Edward Elgar, 2014)

Where does the act of “making available” occur?, in RESEARCH HANDBOOK ON EU INTERNET LAW 191, Andrej Savin, ed. (Edward Elgar, 2014)


Authors’ Contracts and the US Copyright Law, in RESEARCH HANDBOOK ON INTELLECTUAL PROPERTY LICENSING, Jacques de Werra, ed. (Edward Elgar 2013)

User-Generated Content Sites and Section 512 of the US Copyright Act, in Irini Stamatoudi, ed., COPYRIGHT ENFORCEMENT IN CYBERSPACE (Kluwer 2011) http://lsr.nellco.org/columbia_pllt/9192

A Common Lawyer’s Perspective on Contrefaçon, in COPYRIGHT AND PIRACY: AN INTERDISCIPLINARY CRITIQUE, Lionel Bently, Jennifer Davis and Jane C. Ginsburg, eds., Cambridge University Press (2010)


“See Me, Feel Me, Touch Me, Hear Me,” I am a Trademark – A U.S. Perspective, in TRADE MARKS AND BRANDS: AN INTERDISCIPLINARY CRITIQUE 92 (Lionel Bently, Jennifer Davis and Jane C. Ginsburg, eds., Cambridge University Press 2008)


Authors and Publishers: Adversaries or Collaborators in Copyright Law?, with Prof. R.A. Gorman, in AN UNHURRIED VIEW OF COPYRIGHT REPUBLISHED (AND WITH CONTRIBUTIONS FROM FRIENDS) (2005)


U.S. Initiatives to Protect Works of “Low Authorship”, in ROCHELLE DREYFUSS, ET AL., EDS., EXPANDING THE BOUNDS OF INTELLECTUAL PROPERTY: INNOVATION POLICY FOR THE KNOWLEDGE SOCIETY 55 (Oxford University
Press, 2001)


Private Copying in the Digital Environment, with Yves Gaubiac, LIBER AMICORUM HERMAN COHEN JEHORAM 149 (1998)

ARTICLES (in English; see infra for articles in French)


“Courts have twisted themselves into knots”: US Copyright Protection for Applied Art, 40 Columbia J. Law & the
The Most Moral of Rights: The Right to be Recognized as the Author of One’s Work, 8 Geo. Mason J. of Int'l. Commercial L. 44 (2016)

http://ssrn.com/abstract=2772176

http://ssrn.com/abstract=2704017

We (still) need to talk about Aereo: New controversies and unresolved questions after the Supreme Court’s decision, with Rebecca Giblin 38 Colum. J. Law & the Arts (2015)

Letter from the US: Exclusive Rights, Exceptions, and Uncertain Compliance with International Norms, 241 and 242 Revue Internationale du Droit d'Auteur
(Part II, October 2014) http://ssrn.com/abstract=2539178

Fair Use: For Free or “Permitted But Paid”, 29 Berkeley Tech. L. J. 1383 (2014),

We Need to Talk About Aereo: Copyright-Avoiding Business Models, Cloud Storage and a Principled Reading of the "Transmit" Clause, with Rebecca Giblin, (posted 29 May 2014)

“With untired spirits and formal constancy”: Berne-Compatibility of Formal Declaratory Measures to Enhance Copyright Title-Searching, 28 Berkeley Tech. L. J. 1583 (2014),

From Hypatia to Victor Hugo to Larry & Sergey: All the World’s Knowledge and Universal Authors’ Rights, 2012 British Academy Law Lecture, Journal of the British Academy, 1, 71-94. (July 2013),
http://www.britac.ac.uk/journal/1/ginsburg.cfm


http://ssrn.com/abstract=2218764


Duration of Copyright in Audiovisual Works under U.S. Copyright Law, IRIS plus (Journal of the European Audiovisual Observatory) 2012-2


The US Experience with Mandatory Copyright Formalities: A Love/Hate Relationship, 33 Columbia Journal of Law & the Arts 311 (2010), http://lsr.nellco.org/columbia_pllt/9181

The Author’s Place in the Future of Copyright, 153 Proceedings of the American Philosophical Society 147 (2009); also published at 45 Willamette Law Rev. 381(2009)


The Author’s Name as a Trademark: A Perverse Perspective on the Moral Right of “Paternity”?, 23 Cardozo Arts & Entertainment L. Rev. 379 (2005), available at http://lsr.nellco.org/columbia/pllt/papers/0591


Copyright and Control over New Technologies of Dissemination, 101 COLUMBIA LAW REVIEW 1613 (2001)

Viewpoint: What to Know Before Reissuing Old Titles as E-Books, 44 COMMUNICATIONS OF THE ACM 25 (September 2001)

“The Exclusive Right to Their Writings”: Copyright Versus Control in the Digital Age, 7 NEW ZEALAND BUSINESS LAW QUARTERLY 136 (May 2001); also in 54 Maine L. Rev.196 (2002)


Stolen Content: Avoiding Trouble on the Web, 87 ACADEME 48 (Jan.-Feb. 2001)


The Cyberian Captivity of Copyright: Territoriality and Authors’ Rights in a Networked World, 15 SANTA CLARA COMP. & TECH. L. J. 347 (1999)


An Analysis of H.R. 2652, the Collections of Information Antipiracy Act, 27 COMPUTER LAW REPORTER (April 1998)

Symposium, Electronic Rights in International Perspective, general editor, and author of a comment on decisions from Belgium and France, and a comment on Electronic Rights and the Private International Law of Copyright, 22 COLUMBIA-VLA J. L. & THE ARTS 127 (1998)

Authors and Users in Copyright, the 1997 Brace Lecture, 45 J. COPYR. SOC. 1 (1998)


The Celestial Jukebox and Earthbound Courts: Judicial Competence in the European Union and the United States Over Copyright Infringements in Cyberspace, 173 REVUE INTERNATIONALE DU DROIT D’AUTEUR 3 (July 1997), with Myriam Gauthier, LL.M


Digital Libraries and Some of the Copyright Issues they Raise, 169 REVUE INTERNATIONALE DU DROIT D’AUTEUR 5 (July 1996)


Surveying the Borders of Copyright, 41 J. COPYR. SOC. 322 (1994)


Reproductions of Protected Works for University Research and Teaching, 39 J. COPYR. SOC. 181 (1992)

Authors and Exploitations in International Private Law: The French Supreme Court and the Huston Film Colorization Controversy, with Professor Pierre Sirinelli, 15 COLUM.-VLA J. LAW & THE ARTS 135 (1991)

Creation and Commercial Value: Copyright Protection of Works of Information, 90 COLUM. L. REV. 1865 (November 1990); condensed versions in COPYRIGHT IN INFORMATION 41 (E. Dommering & P.B. Hugenholtz, ed., Institute for Information Law, University of Amsterdam, 1991) and in 1991/2 DROIT DE L'INFORMATIQUE ET DES TÉLÉCOMS 6


Moral Rights in a Common Law System, 1 ENT. L. REV. 121 (U.K.) (1990), also published in MORAL RIGHTS PROTECTION IN A COPYRIGHT SYSTEM, (P. Anderson and D. Saunders, eds., Griffith University, Brisbane, Australia (1992), and in German in GEWERBLICHER RECHTSSCHUTZ UND URHEBERRECHT (GRUR) (publication of the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law, Munich, Federal Republic of Germany) (1991)

A Tale of Two Copyrights: Literary Property in Revolutionary France and America, 64 TUL. L. REV. 991 (1990); also published in 147 REVUE INTERNATIONALE DU DROIT D'AUTEUR 125 (Jan. 1991); revised version published in OF AUTHORS AND ORIGINS (an internationally-authored collection of essays on copyright theory) (B. Sherman and A. Strowel, eds., Oxford U. Press 1994)


Colors in Conflicts: Moral Rights and the Foreign Exploitation of Colorized U.S. Motion Pictures, 36 J. COPYR. SOC. 81 (1988). This article received the Copyright Society of the U.S.A.'s Charles B. Seton Award for 1988

The Right of Integrity in United States Audiovisual Works, in MELANGES OFFERTS A JOSEPH VOYAME 119 (festschrift) (Lausanne, 1989) (expanded version of Colors in Conflicts)


Reforms and Innovations Regarding Authors' and Performers' Rights in France: Commentary on the Law of July 3,
1985, 10 COLUM.-VLA J. LAW & ARTS 83 (1985)

Authors’ Rights in France: The Moral Right of the Creator of a Commissioned Work to Compel the Commissioning Party to Complete the Work, with Prof. André Françon, 9 COLUM.-VLA J. ART & THE LAW 381 (1985)


The Teaching of Copyright Law in the United States of America, UNESCO COPYRIGHT BULLETIN, vol. XX, No. 2/3, p. 52 (1986) (French, Spanish and Russian translations of this article appeared in 1986 and 1987 UNESCO publications)


Note [unsigned], An Author's Artistic Reputation Under the Copyright Act of 1976, 92 HARV. L. REV. 1490 (1979)

Reports

“Determination of the Country of Origin When a Work is First Publicly Disclosed over the Internet,” Committee Chair and principal author for the Country of Origin Study Group of the International Literary and Artistic Association, REVUE INTERNATIONALE DU DROIT D’AUTEUR (April 2012)

“Restoration of Copyright Under Berne Conv. Art. 18.1: The ‘His Girl Friday’ Case and the French Cour de cassation,” report to the 2010 Association Littéraire et Artistique Internationale (ALAI) Study Days, Vienna, Austria, September 2010


INTELLECTUAL PROPERTY - PRINCIPLES GOVERNING JURISDICTION, CHOICE OF LAW AND JUDGMENTS IN TRANSNATIONAL DISPUTES, with Prof. Rochelle Dreyfuss and Prof. François Dessemontet, American Law Institute 2008

“The Author’s Place in XXI Century Copyright as Updated by the TRIPs and WIPO Treaties,” General Report to the 2007 Congress of the Association Littéraire et Artistique Internationale (ALAI), Punta del Este, Uruguay, November 2007. Excerpts appeared as an invited Editorial in the January 2008 issue of INTERNATIONAL INTELLECTUAL PROPERTY AND COPYRIGHT (IIC), published by the Max Planck Institute (Munich, Germany)


La loi applicable à la circulation des oeuvres de l’esprit sur les réseaux numériques: le point de vue d’un juriste américain (report submitted to the Ministry of Culture and Communication of France, 2000)
Private International Law Aspects of the Protection of Works and Objects of Related Rights Transmitted Through Digital Networks (WIPO 1998)

Columns

Book review of Peter Baldwin, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*, TIMES LITERARY SUPPLEMENT, June 5, 2015, p. 28

Opinion: Hyperlinking and ‘Making Available’ 36 EIPR 147 (2014)

“Copyright in academic writings: yours to have and to hold (and from which a publishing contract need not make you part),” in *Scripta Manent*, NOTICES OF THE AMERICAN MATHEMATICAL SOCIETY (August 2012)

MEDIA INSTITUTE INTELLECTUAL PROPERTY ISSUES; bimonthly contributor –

‘Courts Have Twisted Themselves Into Knots’: U.S. Copyright Protection for Applied Art (June 29, 2016)  
https://www.mediainstitute.org/category/intellectual-property-issues/

Losing Credit: Legal Responses to Social Media Platforms’ Stripping of Copyright Management Metadata from Photographs (May 30, 2016)  

Security Failure Fair Use Analysis (January 25, 2016)  
https://www.mediainstitute.org/2016/01/25/security-failure-fair-use-analysis/

Copyright: No Longer a Property Right? (November 24, 2015)  
https://www.mediainstitute.org/2015/11/24/copyright-no-longer-a-property-right/

Google Books and Fair Use: From Implausible to Inevitable? (October 19, 2015)  
https://www.mediainstitute.org/2015/10/19/google-books-and-fair-use-from-implausible-to-inevitable/

Making Art and Making a Living (August 24, 2015)  
https://www.mediainstitute.org/2015/08/24/making-art-and-making-a-living/

Author-Protective Laws in International Dimension (June 15, 2015)  
https://www.mediainstitute.org/2015/06/15/author-protective-laws-in-international-dimension/

The Next Great Copyright Act: Remember the Authors! (II) (April 6, 2015)  
https://www.mediainstitute.org/2015/04/06/the-next-great-copyright-act-remember-the-authors-ii/

Authors’ Rights Under “The Next Great Copyright Act” (Feb. 17, 2015)  
https://www.mediainstitute.org/2015/02/17/authors-rights-under-the-next-great-copyright-act/

Actors as Authors? (Dec. 1, 2014)  
https://www.mediainstitute.org/2014/12/01/actors-as-authors/

Electronic course reserves: From false clarity to true obscurity? (October 31, 2014)  
https://www.mediainstitute.org/2014/10/31/electronic-course-reserves-from-false-clarity-to-true-obscurity/

U.S. Compliance With the International Right of Communication to the Public After *Aereo*: Who Is “the Public”? (August 21, 2014)  
https://www.mediainstitute.org/2014/08/21/u-s-compliance-with-the-international-right-of-communication-to-the-
public-after-aereo-who-is-the-public/

Fair Use for Free, or “Permitted but Paid”? (May 12, 2014)
https://www.mediainstitute.org/2014/05/12/fair-use-for-free-or-permitted-but-paid/

Hyperlinking and Infringement: The CJEU Decides (sort of) (March 17, 2014)
https://www.mediainstitute.org/2014/03/17/hyperlinking-and-infringement-the-cjeu-decides-sort-of/

Aereo in International Perspective: Individualized Access and U.S. Treaty Obligations (February 18, 2014)
https://www.mediainstitute.org/2014/02/18/aereo-in-international-perspective-individualized-access-and-u-s-treaty-obligations/

Copyright Enforcement in the EU: The Return of Website Blocking (December 30, 2013)
http://www.mediainstitute.org/IPI/2013/123013.php

Still Needed: A Functioning Digital Market (October 16, 2013)
http://www.mediainstitute.org/IPI/2013/101613.php

Opera and Copyright (August 13, 2013)
http://www.mediainstitute.org/IPI/2013/081313.php

Where does the Act of “making available” occur? Part II (June 18, 2013)
http://www.mediainstitute.org/IPI/2013/061813.php

WNET v Aereo: The Second Circuit Persists in Poor (Cable)Vision (April 23, 2013)
http://www.mediainstitute.org/IPI/2013/042313.php

A “Potato” Firmly Planted: Moral Rights and Site-Specific Art (Feb. 25, 2013)
http://www.mediainstitute.org/IPI/2013/022613.php

News From the EU: Where Does the Act of ‘Making Available’ Occur? (Oct. 29, 2012)
http://www.mediainstitute.org/IPI/2012/102912.php

http://www.mediainstitute.org/IPI/2012/080612.php

Host Service Provider Liability for User-Posted Content: A View from the EU (June 18, 2012)
http://www.mediainstitute.org/IPI/2012/061812.php

http://www.mediainstitute.org/IPI/2012/041912.php

Do Treaties Imposing Mandatory Exceptions to Copyright Violate International Copyright Norms? (Feb. 28, 2012)
http://www.mediainstitute.org/IPI/2012/022812.php


Internet publication and U.S. copyright imperialism

Authors’ Contracts and the U.S. Copyright Law: Part II (April 20, 2011)
Authors’ Contracts and the U.S. Copyright Law: Part I (March 15, 2011)

News Aggregation: Discord Among Common Law Jurisdictions (January 11, 2011)

Collapsing Copyright Categories - When is a Download Also a Public Performance? (October 28, 2010)

Restoration of Copyright: An International Perspective (August 18, 2010),

Conflict of Laws in the Google Book Search: A View From Abroad (June 2, 2010),

“The sole right ... shall return to the Authors”: Part III: Transitional Issues (April 14, 2010),

“The sole right ... shall return to the Authors”: Part II: Implementing Authors’ Recapture Rights Under the 1976 Copyright Act (February 26, 2010)

“The sole right ... shall return to the Authors”: Part I: Recapturing Authors’ Alienated Copyrights (December 9, 2009),

Borderless Publications, the Berne Convention, and U.S. Copyright Formalities (October 20, 2009),

A Re-Moveable Feast? (August 14, 2009),

Public Licenses: The Gift That Keeps On Giving (June 11, 2009),

Authors’ Contracts: Don’t Give Away the Store! (February 19, 2009),
http://www.mediainstitute.org/new_site/IPI/2009/021909_AuthorsContracts.php

PUBLICATIONS IN FRENCH


Droit d’auteur, liberté d’expression et libre accès à l’information (étude comparée de droit américain et européen), with Prof. André Lucas, 249 RIDA (Revue Internationale du Droit d’Auteur) 5 (July 2016)


« ... les princes affectent toutes les formalités de la justice, lorsqu’ils sont le plus déterminés à la violer » : Formalités et justice en droit d’auteur selon la Convention de Berne, 28 Cahiers de la Propriété Intellectuelle 1109 (2015)

Regards croisés (États-Unis – France) sur le statut d’auteur d’un acteur d’une œuvre audiovisuelle, with Prof. Pierre
La localisation de l’acte de « mise à disposition » in MELANGES EN L’ HONNEUR DU PROFESSEUR ANDRE LUCAS, Carine Bernault et al., eds. 401 (2014)


Durée de la protection des enregistrements sonores : Comparaison des régimes EU et UE, 1 JURIS ART ET CULTURE (Dalloz) 27 (inaugural issue, 2012)


L’avenir du droit d’auteur : Un droit sans auteur?, COMMUNICATIONS COMMERCE ELECTRONIQUE 7 (May 2009)


Propriété littéraire et artistique et propriété tout court : une relation ambiguë, 65 Droit + Ville 7 (2008)

Peer to Peer : Les Conséquences de l’affaire Grokster, 25 PROPRIETES INTELLECTUELLES 408 (oct. 2007)

Contrefaçon, fourniture de moyens et faute: Perspectives dans les systèmes de common law et civilistes à la suite des arrêts Grokster et Kazaa, with Yves Gaubiac, 203 REVUE INTERNATIONALE DU DROIT D’AUTEUR 3 (Jan. 2006)

Nouvelles des Etats Unis: Responsabilité pour complicité de contrefaçon – La décision de la Cour suprême du 27 juin 2005 dans l’affaire MGM v Grokster, 2005 AUTEURS & MEDIA (Belgium) 290 ; also published in Canada in 17 CAHIERS DE LA PROPRIETE INTELLECTUELLE 705 (2005)


A propos du Livre Blanc Américain sur "Intellectual Property and the National Information Infrastructure", 95/3 DROIT DE L'INFORMATIQUE ET DES TELECOMS 73

Le GATT/OMC et la propriété intellectuelle, 95/1 DROIT DE L'INFORMATIQUE ET DES TELECOMS 5

Droit d'auteur et support matériel en droit international privé, in MELANGES OFFERTS A ANDRE FRANÇON 245 (1995)

Determination de la loi applicable à la titularité du droit d'auteur entre l'auteur d'une oeuvre d'art et le propriétaire de son support, REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVE 1994.603

Droit d'auteur et propriété de l'exemplaire d'une oeuvre d'art: étude de droit comparé, REVUE INTERNATIONALE DE DROIT COMPARE 1994.811

L'Exploitation Internationale de l'oeuvre audiovisuelle: France/Etats-Unis, 1994 JCP I 3634

L'affaire américaine Feist et la notion d'originalité: à propos des banques de données et des compilations, 4 CAHIERS DE LA PROPRIETE INTELLECTUELLE 233 (1992)

Le titulaire du droit d'auteur en droit international privé français, Note on Paris, 14 mars 1991, 1992 JCP II 21780 (Cofrad et La Rosa c/ Almax)

Auteur, création et adaptation en droit interne et en droit international privé français: Reflections à partir de l'arrêt Huston, with Professor Pierre Sirinelli, 150 RIDA 3 (oct. 1991)

La protection aux Etats-Unis des oeuvres d'art, 37 REVUE DU DROIT DE LA PROPRIETE INTELLECTUELLE 19 (oct. 1991)

Note on Civ. 1re, 28 mai 1991 (Huston), with Prof. Pierre Sirinelli, 1991 JCP, éd. E. II 220

Les nouvelles lois des Etats-Unis sur le droit moral des artistes d'art plastique, sur la protection des oeuvres d'architecture, et sur la location des logiciels, 147 RIDA 363 (Jan. 1991)

"Reverse engineering" et protection du logiciel par le droit d'auteur aux Etats-Unis, REV. DR. DE L'INFORMATIQUE ET DES TELECOMS 1990-1, p. 84

Conflits de lois et droit moral, 22 CAHIERS DU DROIT D'AUTEUR 13 (Dec. 1989)

Conflits de lois et titulaire initial du droit d'auteur, 18 CAHIERS DU DROIT D'AUTEUR 1 (July-Aug. 1989) (republished from 5 REVUE DU DROIT DE LA PROPRIETE INDUSTRIELLE 26 (1986))

Le droit au respect des oeuvres audiovisuelles aux Etats Unis, 135 RIDA (Jan. 1988); updated in Japanese in April 1989 issue of COPYRIGHT, monthly publication of Copyright Research Institute, Tokyo

Evolution récente du droit d'auteur aux Etats Unis, 133 RIDA (July 1987) 111

Banques de données et droit d'auteur aux Etats Unis, in BANQUES DE DONNEES ET DROIT D'AUTEUR 99-107 (1987); reprinted in DROIT DE L'INFORMATIQUE ET DES TELECOMS, January 1988

Nouvelles des Etats Unis: Protection par le droit d'auteur de la structure des logiciels, REVUE DU DROIT DE L'INFORMATIQUE, January 1987