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PRESENTS

THE ELEVENTH ANNUAL SPRING LECTURE

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BAKER BOTTS L.L.P.

POST-INDUSTRIAL PROPERTY

JULIE E. COHEN

Professor of Law

Georgetown University

Commentator:

Bart Showalter, Baker Botts L.L.P.

THURSDAY, MARCH 6, 2014

The Coronado Club

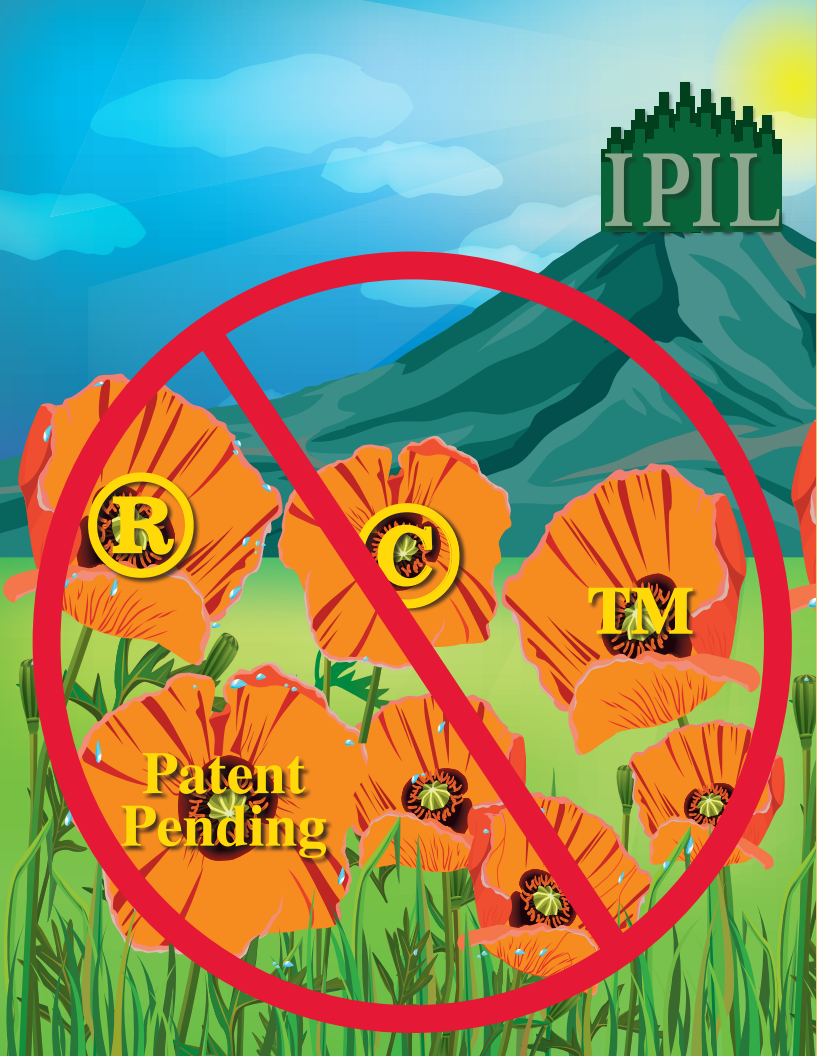
919 Milam Street, Houston, Texas

Reception 5:30 p.m. - Lecture 6:15 p.m.

One Hour of MCLE Credit

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Prior Baker Botts Lectures

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David McGowan, University of San Diego School of Law

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Paul Goldstein, Stanford Law School

Copyright on a Clean Slate

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Douglas Lichtman, UCLA School of Law

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William O. Hennessey, Franklin Pierce Law Center

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Robert Merges, University of California Berkeley School of Law

The Concept of Property in the Digital Age

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Joel Reidenberg, Fordham University School of Law

The Rule of Intellectual Property Law in the Internet Economy

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Patents in a Changing Economy

2005

F. Scott Kieff, Washington University in St. Louis School of Law

Theory & Practice in Commercializing Innovation

2004

Jane Ginsburg, Columbia University School of Law

The Right to Claim Authorship



Julie E. Cohen

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Julie E. Cohen is a Professor of Law at the Georgetown University Law Center in Washington, D.C. Her research focuses on intellectual property law and information privacy law, with particular focus on the intersection of copyright, privacy rights, and information architectures.

Cohen's recent publications include *CONFIGURING THE NETWORKED SELF: LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE* (Yale University Press, 2012); *COPYRIGHT IN A GLOBAL INFORMATION ECONOMY*, 3d ED. (Aspen Publishers, 2010 & Supp. 2013) (with Loren, Okediji, & O'Rourke); *What Privacy Is For*, 126 Harv. L. Rev. 1904 (2013); and *Copyright as Property in the Post-Industrial Economy: A Research Agenda*, 2011 Wisc. L. Rev. 141 (2011).

Cohen clerked for the Hon. Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit. She practiced law in San Francisco with McCutchen, Doyle, Brown & Enersen. From 1995 to 1999, she taught at the University of Pittsburgh School of Law. Cohen joined the Georgetown Law faculty in 1999. She is a member of the Advisory Boards of the Electronic Privacy Information Center and Public Knowledge.

Post-Industrial Property

Among lawyers, perhaps the most famous description of property is William Blackstone's reference to the "sole and despotic dominion" of the real property owner. Even in Blackstone's day the statement was more theatrical than strictly descriptive, but theater can prove irresistible. Debates among property scholars about just how despotic the landowner's dominion should be have been heated and nearly all-consuming. The lecture will consider an opportunity cost of that preoccupation: The idea of property in land as the paradigm case of property exercises despotic dominion over property thinking, with unfortunate consequences for theory and doctrine alike.

In particular, the despotic dominion of the property-in-land paradigm has shaped the debate about whether intellectual property is property. Copyright and patent scholars have pursued that inquiry within a conceptual framework derived from common law real property doctrines and organized around the practical and theoretical problems associated with property rights in land. This state of affairs is especially odd because the resources at the center of contemporary intellectual property debates about the appropriate extent of rightholder control could not be more different from land. Intellectual resources are routinely sliced and diced, aggregated and fractionated, used and reused, in ways that land is not and could not be.

The lecture will argue that intellectual property is a species of property, but that understanding the significance of that label by reference to land as the paradigm case is a mistake. Property institutions organize access to resources, and so it is reasonable to expect them to differ in ways that respond to the underlying resources. What is needed is an account of property in intellectual goods—post-industrial property—that resembles property in land in some respects, property in natural resources in other respects, property in corporations in others, and property in intangible instruments in still others, and that also systematically diverges from each of those other forms of property. More particularly, an account of intellectual property must address four important points of departure from the land-centric model of property: the different incentives of multiple contributors; the variety of ways in which intellectual goods are produced; the central importance of intermediation within intellectual property ecologies; and the emergence of hybrid institutions between property and contract.

The Baker Botts Lectures

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