

CATHAY Y. N. SMITH
Professor of Law
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PROFESSIONAL HISTORY

University of Montana Alexander Blewett III School of Law, Missoula, Montana

Professor (Aug. 2021-present)

Acting Dean, Academic Affairs (Oct. 2021-July 2022)

Associate Professor (Aug. 2018-July 2021)

Assistant Professor (Aug. 2015-July 2018)

Courses

Advanced Issues in Intellectual Property Law

Art and Cultural Property Law

Introduction to Intellectual Property Law

Property Law

Race, Social Justice, and Intellectual Property: A Seminar

University Grants

Montana Global Research Incentive Program Grant, 2022-23

UM Diversity Funding Award, 2021-22

University Awards

Nancy Borgmann Diversity Award, 2022

Law School Awards

Boone Law Faculty Scholarship Award, 2021

Heman Memorial Law Faculty Award, 2020

Law School Merit Award, 2019

Boone Law Faculty Scholarship Award, 2017

Law School Service

Faculty Advisor, Montana Black Law Students Association (2020-2023)

Faculty Advisor, Parents, Allies & Caregivers Student Association (2019-2023)

Faculty Advisor, Business and Intellectual Property Student Group (2017-2023)

Faculty Advisor, 1L Students Law Firm (2015-2017, 2018-2020, 2021-2022)

Law School Culture and Climate Advisory Group (2020-2021)

Appointments Committee (2018-2022, 2023-2025) (elected)

Curriculum Committee (2015-2019), Chair (2023-2024)

Dean's Advisory Committee (2019-2020, 2023-2024)

Library, Technologies, and Facilities Committee (2015-2019, 2020-2021)

Perquisites & Merit Pay Review Committee (2019-2021, 2023-2024) (elected)

Strategic Planning Committee (2021-2022) (elected)

**Oxford Intellectual Property Research Centre (OIPRC), Faculty of Law
University of Oxford, Oxford, England**

Visiting Research Fellow (Sept. 2022-Aug. 2023)

Judge, 20th Annual Oxford International IP Law Moot Competition (March 2023)

New York Law School London Program, London, England

Visiting Professor (June 2018)

- Course: International Intellectual Property Law.

University of Denver Sturm College of Law, Denver, Colorado

The Kenneth R. Whiting Teaching Fellow (Aug. 2014-July 2015)

- Course: Community Economic Development Clinic. Supervised and taught 2L & 3L students as they represented non-profit and small business start-ups in Colorado.

Katten Muchin Rosenman LLP, Chicago, Illinois

Associate, Trademark & Copyright Litigation (Sept. 2006-Sept. 2012)

- Represented multi-national entertainment, media, fashion, and medical/pharmaceutical corporations. See selected published decisions below.

EDUCATION

The London School of Economics and Political Science, London, England

MSc. in Law, Anthropology and Society (2013)

Loyola University Chicago School of Law, Chicago, Illinois

J.D. (2006)

- Honors-at-Entrance Scholarship (2003-2006)
- Chicago Intellectual Property Colloquium Fellow (Spring 2006)

Washington and Lee University, Lexington, Virginia

B.S. with Special Attainments in Commerce (2003)

- The W. Baker Hall Scholarship (1999-2003)

LAW REVIEW ARTICLES & ESSAYS

***The Criminally Complicated Copyright Questions About Trump's Mugshot*, [76 STANFORD L. REV. ONLINE](#) (forthcoming 2024)**

Former-President Donald Trump surrendered at the Fulton County jail in Georgia on August 24, 2023, where he was booked on 13 felony counts and photographed for a mugshot. The mugshot shows Trump dressed in a navy-blue suit jacket, white shirt, and red tie. His face is slightly angled to one side, his chin tucked, his mouth pouting, and his eyes glaring at the camera. Trump's mugshot went viral on social media and news outlets, and began to appear on merchandise for sale, such as mugs, t-shirts, hats, and even toilet paper rolls. Trump's own campaign started using the mugshot on campaign merchandise for sale, often with the words "Never Surrender" or "2024" next to the image. His campaign also publicly threatened to "come

after” any unauthorized third-parties that use the mugshot. But who owns Trump’s mugshot under copyright law? And who can use the mugshot? This essay answers those questions and, in the process, explores complicated copyright concepts of authorship, originality, government edicts, free speech, and fair use.

***Rewriting History: Copyright, Free Speech, & Reimagining Classic Works*, [69 VILLANOVA L. REV.](#) (forthcoming 2024)**

On February 17, 2023, news broke that Puffin Books, a subsidiary of Penguin Random House and publisher of Roald Dahl’s books, had edited at least ten of Dahl’s classic children’s books to “make them less offensive and more inclusive.” The public backlash to the news was significant and attracted criticism from several high-profile public figures. But, despite the significant media coverage and public discussion of those announcements, little attention has been paid to the legal implications of revising classic books. This Article offers a comprehensive examination of the copyright and free speech implications of revising classic works, including books, films, and dramatic works. Through extensive research, including primary materials and secondary sources outside the legal literature, this Article surveys the history of revising classic books, films, and dramatic works to remove offensive content and make them palatable to modern audiences. It then explores three questions: Do edits to children’s works advance social justice or do they rewrite history? Do they censor speech or do they promote copyright’s purpose of encouraging free expression? How do these edits to classic children’s works implicate copyright doctrines of infringement, fair use, and derivative rights? By answering these questions, this Article uncovers potential conflicts between copyright policy, free speech, and social policy, and copyright’s role in serving the diverse interests of society.

***Editing Classic Books: A Threat to the Public Domain?*, [109 VIRGINIA L. REV. ONLINE](#) (forthcoming 2023)**

Over the past few years, there has been a growing trend in the publishing industry of hiring sensitivity readers to review books for offensive tropes or racial, gender, or sexual stereotypes. In February 2023, for instance, reports that Puffin Books had edited several classics by Roald Dahl, in consultation with sensitivity readers, generated immediate backlash from the public and several renowned authors and politicians. While most of that backlash focused on accusations of “censorship” and “cancel culture,” this Essay examines an actual legal consequence of revising classic books: the creation of copyrightable derivative works in updated editions. This Essay examines editors that have claimed copyright in new illustrations or new editions of classic books, and the potential to create copyrightable derivative works when editors revise and publish new editions of classic books that remove cultural, ethnic, and gender stereotypes. It argues that copyright must strike a balance to ensure follow-on creativity is encouraged and editors are rewarded for updating classic books to suit a modern audience and readership, but it must also guard against the inadvertent consequence of diminishing the public domain of classic books.

***Cancelling Dr. Seuss*, [26 VANDERBILT J. ENTER. & TECH. L. 73](#) (2023)**

Dr. Seuss Enterprises announced in March 2021 that it would no longer license or publish six of its children’s books because those books portrayed people in racist or culturally-stereotypical

ways. The public reaction to Dr. Seuss’s decision has been largely divided. Some criticized it as censorship or a product of “cancel culture.” Others applauded the decisions as long overdue reckoning with problematic portrayals in children’s works. While the recent decisions to cease publishing classic works have generated significant attention and controversy, it is in fact not uncommon for authors, copyright owners, and publishers to remedy racist or sexist content in their expressive works, especially in works intended for children. This Article examines one approach that copyright owners have taken to deal with racist, sexist, or other problematic classic children’s works—ceasing to make those works available to the public. Specifically, copyright owners have attempted to withdraw certain problematic children’s works by ceasing to publish, license, perform, or broadcast those works, and otherwise making those works unavailable to the public. This Article reviews well-known examples of copyright owners ceasing to make their popular children’s works available to the public, including Dr. Seuss’s refusal to publish or license six of its books, United Artists’s failure to broadcast cartoons known as the “Censored Eleven,” and Disney’s rejection of its controversial film *SONG OF THE SOUTH*. It examines the copyright law and policy implications of those actions.

***Weaponizing Copyright*, [35 HARVARD J. OF L. & TECH. 193 \(2022\)](#)**

This article examines the increasingly widespread phenomenon of individuals using copyright to vindicate noncopyright interests, which this article refers to as “weaponizing copyright.” Copyright grants authors exclusive rights in their works in order to encourage creation and dissemination of socially valuable works. It permits copyright owners to assert their copyright against violations of those rights when necessary to protect their market exclusivity and economic interests. Increasingly, however, copyright is being used by individuals to achieve other objectives. In some cases, copyright is weaponized to silence criticism and legitimate speech. In other instances, the objective is to erase facts and make information disappear. Some assertions of copyright are intended to punish or retaliate for some perceived wrongdoing. Other assertions of copyright involve attempts to protect the reputation and dignity of copyright owners. Another objective is to protect privacy in personal and intimate information. In none of these scenarios are copyright owners seeking to protect their legitimate market or economic interests in their copyrighted works, the intended purpose of copyright. Through exploring recent and high-profile instances of copyright weaponization involving Harvey Weinstein and Ronan Farrow, Pepe the Frog and InfoWars, Success Kid and Steve King, Navy SEALs and the Associated Press, and others, this article exposes the increasingly widespread practice of copyright weaponization. It explains how copyright became the weapon par excellence for individuals to punish, erase, suppress, protect, and vindicate noncopyright interests, and why individuals choose to weaponize copyright instead of pursuing claims under other laws. It also challenges the presumption that weaponizing copyright is always harmful and must be discouraged by exploring the power dynamics and blurry lines between weaponization by aggressors to punish, erase, suppress, and weaponization by the vulnerable to protect, preserve, and defend.

- Reviewed by Michael W. Carroll, *The Threat Value of Copyright Law*, JOTWELL (Oct. 12, 2021)

***Copyright & Memes: The Fight for Success Kid*, [110 GEORGETOWN L.J. ONLINE 142](#) (2021)
(with Stacey Lantagne)**

This article explores the complicated relationship between memes and copyright. Internet memes have become a ubiquitous part of social communications. They effectively express an idea, message, or sentiment, often more humorously and efficiently than words. Most memes evolved from original content that internet users found online and copied, altered, shared, and imbued with new cultural and social meaning. Because memes frequently involve the unauthorized use, alteration, and sharing of a content creator's original image or photograph, they naturally implicate the content creator's copyright. But who owns a meme? What rights, if any, does the creator of the original content have in a meme derived from their work? This essay examines a current copyright case *Griner v. King*, involving the unauthorized use of the highly popular Success Kid meme, to explore doctrinal uncertainties involving copyright authorship and ownership, abandonment, social media sharing and implied licensing, and fair use in internet memes.

***Political Fair Use*, [62 WILLIAM & MARY L. REV. 2003](#) (2021)**

Through a series of case studies, this article identifies a pattern in political fair use decisions: In disputes arising from the unauthorized political uses of copyrighted works, courts appear to implicitly modify their analyses and balancing of the fair use factors under Section 107 of the Copyright Act in order to both accommodate the import of political speech and to respect copyright owners' dignity and rights to control use of their expressive works. Under the courts' political fair use analysis, one determination—the nature of the original copyrighted work—exerts an outsized influence on the determination of all four fair use factors, permitting certain unauthorized political uses of copyrighted works to appear presumptively fair. This article highlights concerns with this approach and explores the normative implications of political fair use on litigation certainty and predictability, incentives to create political expressive works, and the balance between respecting creators' dignity and rights to control use of their expressive works with guaranteeing free and open discussion of politicians and political candidates.

- Reviewed by Sarah Burstein, *Should (Some) Political Uses Be Presumptively Fair?*, JOTWELL (Jan. 18, 2022)

***Copyright Silencing*, [106 CORNELL L. REV. ONLINE 71](#) (2021)**

This essay highlights a practice I call “copyright silencing,” which is the use of copyright to silence criticism and suppress or erase facts and information instead of protecting copyright owners' legitimate interests in their works. It notes recent examples of this behavior, including by Carol Baskin (from the Netflix docuseries *Tiger King*), Harvey Weinstein, and Dr. Drew, and examines copyright silencing's harm to individuals and society and why it is so difficult to stop.

- Reviewed by Michael W. Carroll, *The Threat Value of Copyright Law*, JOTWELL (Oct. 12, 2021)

***Creative Destruction: Copyright's Fair Use Doctrine and the Moral Right of Integrity*, [47 PEPPERDINE L. REV. 601](#) (2020)**

This article explores the role of copyright's fair use doctrine as a limit on the moral right of integrity. The moral right of integrity gives an author the right to prevent any distortion,

modification, or mutilation of their work that prejudices their honor or reputation. At the same time, copyright's fair use doctrine allows follow-on creators to transform original works by altering the original work with new expression, meaning, or message. While the federal Visual Artists Rights Act of 1990 (VARA) includes language explicitly making the right of integrity "[s]ubject to" copyright's fair use doctrine under § 107, there have been no decisions in the U.S. interpreting how the doctrine might apply to a moral right of integrity claim. This article illustrates different contexts in visual art where a follow-on creator distorts, mutilates, or modifies an author's work in order to make an artistic, social, or political statement, and how the doctrine of fair use might limit the moral right of integrity in those contexts.

***Truth, Lies, and Copyright*, [20 NEVADA L. J. 201](#) (2019)**

This article offers a comprehensive analysis of copyright protection of fake facts contained in fake news and other sources. It details the different categories of fake facts we encounter today and courts' inconsistent protection of fake facts under copyright law. Even though copyright law may technically protect fake facts as original expression fixed in a tangible medium, this article argues that the public interest in promoting efficiency, fairness, and production of socially valuable works justify treating fake facts as unprotectable facts under copyright law. Specifically, courts should apply copyright law's factual estoppel doctrine to treat fake facts as unprotectable facts in infringement cases where an author previously held out fake facts as true, with the intent that the public rely on them as facts.

***Beware the Slender Man: Intellectual Property and Internet Folklore*, [70 FLORIDA L. REV. 601](#) (2018)**

This article examines the creation and production of internet folklore, and explores how intellectual property treats internet folklore. It uses the internet legend Slender Man as a case study to trace cultural products' creation, development, propertization, and commercialization in order to explore collaborative creation and ownership rights. The research and analyses in this article have broad implications for analyzing intellectual property ownership in collaboratively created cultural products. At the same time, this article revisits hot topic issues and debates in intellectual property law involving community creation, collaborative norms in digital and creative communities, protection of folklore under intellectual property law, copyright protection of characters, and trademark protection of character names and images in expressive works.

- Reviewed by Andres Sawicki, *A View of Copyright from the Digital Ground*, 70 FLA. L. REV. F. 102 (2018)
- Reviewed by Elizabeth Rosenblatt, *Who Will Speak For The Slender Man?: Dialogism and Dilemmas in Character Copyright*, 70 FLA. L. REV. F. 69 (2018)

***Squeeze Blood from Turnip®: Abusing Trademark Law's Morality Provision in the TTAB*, [65 UCLA L. REV. DISC. 88](#) (2017)**

This essay explores an under-discussed issue with trademark law's immorality provision: its abuse by third-parties in Trademark Trial and Appeal Board proceedings.

***Oral Tradition and The Kennewick Man*, [126 YALE L.J. F. 216](#) (2016)**

This essay criticizes the Ninth Circuit's summary rejection of oral tradition evidence introduced by Native American claimants in the NAGPRA case, *Bonnichsen v. United States*, and suggests a test for courts to consider on a case-by-case basis in the future to evaluate the probative value of oral tradition evidence to allow oral tradition to be introduced as evidence.

***Community Rights to Public Art*, [90 ST. JOHN'S L. REV. 369](#) (2016)**

This article argues that certain public art may be so connected to a community's identity that the community's right to preserve its heritage may trump a property owner's right to destroy their own property. It then explores certain existing, yet underutilized, legal solutions a community may use or adapt to preserve public art when that art has become a part of the community's cultural heritage.

***Food Art: Protecting Food Presentation Under U.S. Intellectual Property Law*, [14 John Marshall Rev. Intell. Prop. L. 1](#) (2014)**

This article examines whether chefs can protect the artistic presentation or plating of their dishes under U.S. copyright law, trademark law, and design patent law. It concludes that, while chefs might have limited intellectual property protection over food plating, they may not want to assert these rights in light of the cuisine industry's history and norms of sharing.

***Street Art: An Analysis Under U.S. Intellectual Property Law and Intellectual Property's 'Negative Space' Theory*, [24 DePaul J. Art, Tech. & IP Law 259](#) (2014)**

This article argues that street artists could attempt to use copyright law and the federal Visual Artists Rights Act to protect their artwork from unauthorized copying and destruction. However, due to the nature of street art and the norms and ethos of street artists and their community, intellectual property law is not an effective way to protect street art.

BOOK CHAPTERS

***Copyright in Culinary Presentations*, [in NON-CONVENTIONAL COPYRIGHT: DO NEW AND ATYPICAL WORKS DESERVE PROTECTION?, 128-149](#) (E. Bonadio & N. Lucchi eds.) (2018)**

This book chapter analyzes copyright protection for culinary presentations, including copyright's useful articles exclusion and its application to food after the U.S. Supreme Court's decision in *Star Athletica v. Varsity Brands*.

ADDITIONAL PUBLICATIONS

***Roald Dahl, Hugh Lofting, & Dr. Seuss: Exploring Copyright Implications of Revising Classic Children's Works*, [CREATE BLOG](#) (May 5, 2023)**

***From Roald Dahl to Goosebumps, revisions to children's classics are really about copyright*, [THE CONVERSATION UK](#) (March 7, 2023)**

Food Plating and Trade Dress: Can a Chef Claim Trademark Protection for a Signature Dish?, [CARDOZO ART & ENTERTAINMENT LAW JOURNAL BLOG 75](#) (April 16, 2015)

“Copyright is for losers^{©™}”: *Street Art Flourishes in Intellectual Property’s Negative Space*, [CARDOZO ART & ENTERTAINMENT LAW JOURNAL BLOG 49](#) (June 20, 2014)

PRESENTATIONS

August 2022-present

- *Replicating Immorality? Reviewing Professor Ned Snow’s INTELLECTUAL PROPERTY AND IMMORALITY: AGAINST PROTECTING HARMFUL CREATIONS OF THE MIND*, Texas A&M Journal of Property Law Symposium (October 6, 2023) (invited)
- *Roald Dahl, Hugh Lofting, & Dr. Seuss: Exploring Copyright Implications of Revising Classic Children’s Works*, University of Glasgow CREATE Public Lecture (May 23, 2023)
- *Copyrighting Nature*, University of Miami School of Law, M3 IP Scholars Workshop (May 19, 2023)
- *Cancelling Dr. Seuss (& Editing Roald Dahl)*, University of Oxford, Oxford IP Research Centre Invited Speaker Series at St. Peter’s College (May 4, 2023) (invited)
- *Cancelling Dr. Seuss*, Suffolk University School of Law, Works-In-Progress Intellectual Property (February 4, 2023)
- *Cancelling Dr. Seuss*, University of Oxford IP Discussion Group at the Bonavero Institute of Human Rights (Jan. 25, 2023) (invited)
- *Copyright & Fair Use*, Privacy International (London) (Jan. 24, 2023) (invited)
- *Emerging Voices in IP*, AALS IP Section Works-In-Progress Program (Jan. 6, 2023) (organizer)
- *Why Do Law Professors Hate The Metaverse?*, AALS IP Section Main Program (Jan. 6, 2023) (organizer)
- *The Recorded Classroom*, AALS IP Section Pedagogy Program (Jan. 4, 2023) (organizer)
- *Cancelling Dr. Seuss*, Brunel Law School (London) Research Seminar Series (Nov. 28, 2022) (invited)
- *Cancelling Dr. Seuss*, MOSAIC IP Conference: Access for All? The Role of IP in Equity, Power, and Democracy in Challenging Times (Oct. 28, 2022)

August 2021-July 2022

- *Weaponizing Copyright*, Willamette University College of Law Faculty Colloquium (Nov. 10, 2021) (invited)
- *Copyright & Memes*, Willamette University College of Law, Guest Lecture in Internet & Social Media Law Seminar (Oct. 28, 2021) (invited)
- *Creativity & Culture*, IPSC (Aug. 12, 2021) (moderator)

August 2020-July 2021

- *Laney Griner v. Steve King: Copyright, Memes, and Fair Use*, Montana IP Law Section Exploration Series Lecture (June 2021) (with Stacey Lantagne)

- *Response to Prof. Kali Murray's "IP as Liberation,"* Law Review Annual Lecture, St. Thomas School of Law (April 12, 2021) (invited)
- *Weaponizing Copyright*, Interview with Prof. Brian Frye on Ipse Dixit (March 30, 2021)
- *Weaponizing Copyright*, WIPIP (February 12, 2021)
- *Food Fight!, Evil Twin Debate* between Professors Cathay Smith and Ann Bartow, AALS (Jan. 6, 2021) (invited)
- *Street Art & the Law*, AALS Section on Art Law (Jan. 5, 2021) (invited)
- *Expanding Innovation in the Rocky Mountain West*, Conversation with the USPTO (Nov. 19, 2020)
- *IP and Political Campaigns*, IP Law Association of Chicago (Nov. 17, 2020) (invited)
- *Weaponizing Copyright*, Rocky Mountain Junior Scholar's Conference (Nov. 6, 2020)
- *Weaponizing Copyright*, IP MOSAIC Conference (Oct. 31, 2020)
- *Copyright Silencing*, University of San Diego Law School, Guest Lecture in Corporate Innovation and Legal Policy Seminar (Oct. 14, 2020) (invited)
- *Political Fair Use*, Interview with Prof. Saurabh Vishnubhakat on Ipse Dixit (Sept. 17, 2020) (invited)

August 2019-July 2020

- *Fair Use & the Right of Integrity*, Interview with Prof. Brian Frye on Ipse Dixit (May 8, 2020) (invited)
- *Indigenous IP*, IP Day in Montana, University of Montana Blewett School of Law (April 17, 2020) (organizer) (cancelled due to Covid)
- *Political Fair Use*, University of Oklahoma College of Law, Faculty Lecture Series (March 5, 2020) (invited)
- *Political Fair Use*, Santa Clara Law, WIPIP (Feb. 7, 2020)
- *Political Fair Use*, BYU IP Colloquium (Nov. 14, 2019) (invited)
- *Moral Rights Debate*, BYU Copyright & Trademark Symposium, Issues Facing Modern Media Industries (Oct. 10-11, 2019) (invited)
- *Balancing Author's Dignity with Free Expression*, Center for Civil and Human Rights at the Gonzaga University School of Law, Furthering Social Justice in the Age of Intellectual Property (Sept. 20, 2019) (invited)
- *Political Fair Use*, DePaul University School of Law, IPSC (Aug. 9, 2019)

August 2018-July 2019

- *Political Fair Use*, George Washington University Law School, JIPSA (May 29, 2019)
- *Authorship Agreements with Prof. Cathay Smith*, Blewett School of Law Pop-up Faculty Development Workshop (May 7, 2019)
- *Litigating IP*, IP Day in Montana, University of Montana Blewett School of Law (April 11, 2019) (organizer)
- *Creative Destruction: Copyright's Fair Use Doctrine and the Moral Right of Integrity*, George Washington University Law School, IP Speaker Series (March 27, 2019) (invited)
- *Collaborative Authorship in a Network Society*, Santa Clara School of Law, Internet Work-in-Progress (March 2, 2019)

- *Nonconventional Copyright*, Columbia Law School, IP Speaker Series at the Kernochan Center for Law, Media and the Arts (February 5, 2019) (invited)
- *Truth, Lies, and Copyright*, William and Mary Law School Junior Intellectual Property Scholars Workshop (January 24-26, 2019)
- *Women in the Law*, University of Montana, Women's Law Caucus and Montana Trial Lawyers Association Panel (October 11, 2018) (moderator) (invited)
- *Creative Mutilation: Fair Use in VARA*, University of California Berkeley School of Law, Intellectual Property Scholars Conference (August 10, 2018)

August 2017-July 2018

- *Fair Use in VARA*, Northwestern University School of Law Junior Intellectual Property Scholars Workshop (July 25-26, 2018)
- *How Can IP Support Place-based Innovation?*, University of Montana InnovateUM (April 25, 2018) (invited)
- *Protecting Your Innovations*, IP Day in Montana, University of Montana Blewett School of Law (April 12, 2018) (organizer)
- *Emerging IP Issues in Indian Country*, University of Montana Blewett School of Law (April 11, 2018) (moderator)
- *Writing IP with Cathay Smith*, Tulane Law School Guest Lecture Series (October 3, 2017) (invited)
- *Star Athletica v. Varsity Brands*, Chicago-Kent College of Law, 8th Annual Supreme Court IP Review (September 26, 2017) (invited)
- *Defining the Boundaries of Factual Estoppel in Copyright Law*, Cardozo Law School, Intellectual Property Scholars Conference (August 11, 2017)

August 2016-July 2017

- *Factual Estoppel*, Gonzaga University School of Law, Junior IP Scholars Workshop (June 2-3, 2017)
- *Inaugural IP Day in Montana*, University of Montana Blewett School of Law (March 16, 2017) (organizer)
- *Investigating IP in Internet Folklore*, Case Western Reserve University School of Law, Who Owns Tradition? Reconceptualizing the Protection of Indigenous and Traditional Knowledge, Spangenberg Centre on Law, Technology and the Arts (Nov. 11, 2016) (invited)
- *The Making of a Monster*, LSU Law Center, By Any Other's Name: A Conference on Law, Authorship and Appropriation (Oct. 29, 2016)
- *Art & Intellectual Property*, Montana Art Gallery Directors Association (MAGDA) Annual Conference, Chico Hot Springs (Oct. 13, 2016) (invited)
- *Intellectual Property in Internet Folklore*, Stanford Law School, Intellectual Property Scholars Conference (Aug. 11, 2016)

July 2016 & prior

- *Trademarks, and Copyrights, and Patents, Oh My!*, IP Workshop at the Blackstone LaunchPad at the University of Montana (April 12, 2016) (invited)

- *The Making of a Monster: Investigating Intellectual Property in Internet Folklore*, University of Washington School of Law, Works-In-Progress Intellectual Property (WIPIP) (Feb. 18, 2016)
- *Community Rights to Public Art*, Marquette Law School, First Annual Mosaic Conference: Diverse Voices in Intellectual Property Law (Nov. 14-15, 2014)
- *Food Art and Intellectual Property Law*, The John Marshall Law School Review of Intellectual Property 6th Annual Symposium, Art Meets Law: The Intersection of Art and Intellectual Property (Oct. 24, 2014)
- *Immoral Trademarks*, American University Washington College of Law, 2014 Trademark Works in Progress (Oct. 10-11, 2014)

SELECTED MEDIA INTERVIEWS & QUOTES

- [Revived Fortnight Dance Suit Explores Rare Us of Copyright Law](#), Bloomberg Law (Nov. 13, 2023)
- [Warhol Ruling Vague About How It Tightens Copyright Fair Use](#), Bloomberg Law (May 19, 2023)
- [Idaho state Rep. Heather Scott held a Confederate flag for a photo and shared it online — her husband just didn't want us to do the same](#), Inlander (March 16, 2023)
- [‘Goosebumps’ Author Accuses Publisher of Unsanctioned Edits to His Beloved Children’s Series](#), The New York Sun (March 8, 2023)
- [From Roald Dahl to Goosebumps, revisions to children's classics are really about copyright – a legal expert explains](#), Irish News (March 7, 2023)
- [Copyright, Free Speech Clash in Dispute Over Cameron Boyce’s Final Film](#), Copyright Lately (March 6, 2023)
- [Supreme Court Hears Arguments in Warhol Copyright Case](#), Hyperallergic (Oct. 12, 2022)
- [A Free-Speech Case Tangles a Tech Billionaire, Twitter Troll](#), Bloomberg Law (June 21, 2022)
- [We’re Gonna Rock Down to . . . Copyright Protection: The Unauthorized Use of Popular Music in Political Campaigns During the Social Media Era](#), NYSB (Feb. 16, 2022)
- [Weaponizing Copyright?](#), The National Law Review (Sept. 28, 2021)
- [Is Tumblr About to Get All of Its Creators Sued](#), Slate.com (Aug. 12, 2021)
- [Inside Tumblr’s Latest Meltdown](#), ICYMI, a Slate Podcast (Aug. 11, 2021)
- [A Response to “Weaponizing Copyright” by Cathay Y. N. Smith](#), The Illusion of More (May 25, 2021)
- [Is Rachel Dolezal Using Copyright to Erase History?](#), Copyright Lately (May 21, 2021)
- [Cathay Smith on Weaponizing Copyright](#), Ipse Dixit Podcast (March 30, 2021)
- [The Mural of the Story: Give Credit Where It’s Due](#), Denver Westword (Jan. 4, 2021)
- [Cathay Smith on Political Fair Use](#), Ipse Dixit Podcast (Sept. 17, 2020)
- [VARA Protection for Spontaneous Protest Art](#), Art & Cultural Heritage Law Newsletter (Summer 2020)
- [No, California Law Review, Food Plating Does Not Deserve Copyright Protection](#), TechDirt (June 5, 2020)
- [Cathay Smith on Fair Use & the Right of Integrity](#), Ipse Dixit Podcast (May 8, 2020).
- [One of Daniel Hurst’s Paintings was separated into 88 Spots, Which Were Then Sold Individually](#), The Fashion Blog (April 30, 2020).

- [The fight for the Phillie Phanatic: Who owns the essence of an iconic mascot?](#), The Score (March 4, 2020).
- [Marlon Blackwell Says Saracen Casino Design Was Hijacked](#), Arkansas Business (Feb. 3, 2020).
- [Twitter Yanks Trump Nickelback Meme Video in Copyright Spat](#), Bloomberg Law (Oct. 3, 2019).
- [Still Standing?: The Sometimes Rocky World of Public Art](#), JDSupra (May 28, 2019).
- [A record-setting \\$40.1m sale of an Assyrian relief at Christie's raises red flags](#), The Art Newspaper (Nov. 2, 2018).
- [New study claims Slender Man is in the commons, argues assertion of trademark rights 'chills creativity'](#), World Trademark Review (Sept. 18, 2017).

SELECTED PUBLISHED CASES

- *Kinbook LLC v. Microsoft Corp.*, 866 F.Supp.2d 453 (E.D.Pa. 2012) (aff'd 2013 WL 116516 (3d Cir. 2013))
- *James Braddock v. Angelina Jolie*, 103 U.S.P.Q.2d 1344 (N.D.Ill. 2012)
- *PODS Enterprises v. ABF Freight System, Inc.*, 100 U.S.P.Q.2d 1708 (M.D.Fla. 2011)
- *Facebook Inc. v. Various Inc.*, 99 U.S.P.Q.2d 1300 (N.D.Cal. 2011)
- *Arcadia Group Brands Ltd. v. Studio Moderna SA*, 99 U.S.P.Q.2d 1134 (T.T.A.B. 2011)
- *Penthouse Digital Media Productions, Inc. v. Cloudstreet Inc.*, 98 U.S.P.Q.2d 1496 (T.T.A.B 2010)
- *Roxbury Entertainment v. Penthouse Media Group, Inc.*, 669 F.Supp.2d 1170 (C.D.Cal. 2009) and 91 U.S.P.Q.2d 1173 (C.D.Cal. 2009)
- *Bausch & Lomb Incorporated v. Karl Storz GmbH & Co. KG*, 87 U.S.P.Q.2d 1526 (T.T.A.B. 2008)

NATIONAL & COMMUNITY SERVICE

Chair, AALS IP Section (2022)
Chair-Elect, AALS IP Section (2021)
Executive Committee Member, AALS IP Section (2020)
Creator and Organizer, Annual "IP Day in Montana" Conference, Missoula MT (2017-present)
(Inaugural Founding) Member, IP Law Section of the State Bar of Montana (2016-present)
Board of Directors, Missoula Art Museum (MAM), Missoula, MT (2017-2023)
Elected Member, Public Art Committee, City of Missoula, MT (2016-2019)

BAR ADMISSIONS

Illinois (inactive) & Colorado (inactive)
U.S. Court of Appeals for the Federal Circuit, Ninth Circuit, & Third Circuit

Languages

English & Taiwanese Chinese