

DAVID W. OPDERBECK

PROFESSOR OF LAW

CO-DIRECTOR, GIBBONS INSTITUTE OF LAW, SCIENCE & TECHNOLOGY

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Education

- 2016 Ph.D., Systematic and Philosophical Theology, University of Nottingham, UK. Advisors: Conor Cunningham, John Milbank. External Reader: Robert Song (Durham). Thesis on law, philosophy, theology and neuroscience.
- 2008 Certificate in Missional Theology, Biblical Theological Seminary, Hatfield, PA. Additional theology coursework at Wycliffe College (University of Toronto) and Fuller Theological Seminary.
- 1999 LL.M., Trade Regulation (Intellectual Property and Antitrust), New York University School of Law, New York, NY.
- 1991 J.D., Seton Hall University School of Law, Newark, NJ, *cum laude*. Editor-in-Chief, Seton Hall Legislative Journal.
- 1988 B.A. (History), Gordon College, Wenham, MA.

Professional Certifications

GIAC Information Security Fundamentals, Cert. No. 150972, effective March 2016.

Work Experience

Academic Appointments:

Seton Hall University School of Law, Newark, NJ:

Professor of Law, with tenure (July 2011-Present).

Associate Professor of Law (July 2007-July 2011).

Co-Director, Gibbons Institute of Law, Science & Technology (July 2009-Present). Fellow, Visiting Professor, and Associate Director, Institute of Law, Science and Technology (May 2003-September 2004).

Courses taught include Torts; Cybersecurity Law; Internet Law; International Intellectual Property Law; Patent Law; Copyright Law; Advanced Intellectual Property Seminar;

Trademark Registration Practice; Current Issues in Health, Science and Technology; European Union Law and International Intellectual Property (in Belgium, Ireland and Geneva); Lawyering Skills; Legislation; Professional Responsibility.

As Co-Director of the Gibbons Institute, I am responsible for oversight of the Law School's intellectual property programs and curriculum for J.D., LL.M., and M.S.J. students; cultivation of relationships with external Advisory Board; conception and execution of continuing education programs for the bench and bar; development of international intellectual property programs in Belgium, Ireland and Geneva; management of Institute budget and administration and development of grant funding (won over \$300,000 in external grant funding for cybersecurity law programs in 2010-2012).

Alliance Theological Seminary, Nyack, NY: Adjunct Professor of Theology (2013 – Present). Courses include Christian Ethics, Church History, and Theology and Science.

Notre Dame University Law School, South Bend, IN: Visiting Professor of Law (Spring 2013).

Baruch College, Zicklin School of Business, City University of New York, New York City: Assistant Professor, Law Department (September 2004-July 2007). Courses taught included Business Law; Business Law II; Marketing and Intellectual Property Law; Law and Entrepreneurship.

Law Practice

Gibbons, PC

Counsel (2015-Present). As counsel to the firm's Cybersecurity Task Force, I work with firm attorneys and clients in the rapidly developing fields of cybersecurity, privacy, and electronic commerce law.

Moses & Singer, LLP

Of Counsel (2011-2013). Intellectual Property, Internet/Technology, Global Outsourcing and Procurement, Healthcare and Privacy practice groups.

McCarter & English, LLP, Newark, NJ:

Partner (2001 - 2003), Associate (1991 - 2001), Intellectual Property / Information Technology / Trade Regulation Group. Clients included the largest internet service provider in the United States, computer software and hardware manufacturers, consulting companies, and consumer products and pharmaceutical manufacturers. Transactional experience included intellectual property licensing, trademark clearance, and asset acquisition deals. Extensive experience litigating intellectual property, product liability,

mass tort, and business cases in federal and state courts. Representative litigated cases: *Wedeco UV Technologies, Inc. v. Calgon Corp*, 2006 WL 1867201, D.N.J., June 30, 2006; *Bamberger v. Rohm & Hass Corp.*, 1998 WL 684263, 40 Fed.R.Serv.3d 667, D.N.J., April 01, 1998 (NO. CIV. 96-1041 (WGB)); *McCall v. Metropolitan Life Ins. Co.*, 956 F. Supp. 1172 (1996).

Academic Publications

The End of the Law: NeuroLaw and Theology (forthcoming, Wipf & Stock). Monograph based on doctoral dissertation critiquing reductive neuroscientific accounts of law from a philosophical and theological perspective.

Cybersecurity, Data Breaches, and the Economic Loss Doctrine, 75 MARYLAND L. REV. 935 (2016). Examines the application of the economic loss doctrine to negligence claims for data breaches.

Drone Courts, 44 RUTGERS L.J. 413 (2014). Discusses the possibility of a special court to review prospective targeted drone strikes.

Towards a Theology of Intellectual Property as Social Relations, 10 ST. THOMAS L.J. 738 (2014) (Symposium). Critiques and extends property as social relations perspective on intellectual property from a theological framework.

The Problem With NeuroLaw, 58 ST. LOUIS UNIV. L.J. 497 (2014). Describes and criticizes reductive neuroscientific approaches to law and jurisprudence.

Social Network Analysis of Patents and Trade Secrets as Social Relations, 41 AIPLA Q. 355 (2013). Provides a social network map comparing social networks relating to patents and trade secrets.

Does the Communications Act of 1934 Contain a Hidden Internet Kill Switch, 65 FEDERAL COMMUNICATIONS L.J. 1 (2013). Examines executive powers provisions of the Communications Act of 1934.

Cybersecurity and Executive Power, 89 WASHINGTON U. L. REV. 795 (2012). Assesses the authority of the U.S. President over the Internet in times of cyber-emergency.

Rational Competition Policy and Reverse Payment Settlements Under the Hatch-Waxman Act, 98 GEORGETOWN L.J. 1303 (2010). Develops an empirical index for evaluating validity of patent settlements under the Hatch-Waxman Act.

Patent Damages Reform and the Shape of Patent Law, 89 BOSTON UNIVERSITY L. REV. 127 (2009). Provides an empirical analysis of patent verdicts; discusses proposals for patent damages reform and the effects of such proposals on the shape of patent law.

Deconstructing Jefferson's Candle: Towards a Critical Realist Approach to Cultural Environmentalism and Information Policy, 49 JURIMETRICS 203 (2009). Introduces a critical realist perspective to legal theory concerning access to information.

The Penguin's Paradox: The Political Economy of International Intellectual Property and the Paradox of Open Source, 18 STANFORD LAW & POLICY REV. 101 (2007) (symposium). Presents game theoretic political economy models of international intellectual property, accounting for the influence of open source production methods.

A Virtue Ethics Approach to the Biotechnology Commons (or, The Virtuous Penguin), 59 MAINE LAW REV. 316 (2007) (symposium). Approaches the problem of access to information in biotechnology from a virtue ethics perspective.

Patents, Essential Medicines, and the Innovation Game, 58 VANDERBILT LAW REVIEW 501 (2005). Provides a game theory model of how changes in patent protection under international conventions could affect prices of medicines, incentives for drug manufacturers to innovate, and access to medicines in developing countries.

Peer-to-Peer Networks, Technological Darwinism, and Intellectual Property Reverse Private Attorney General Litigation, 20 BERKELEY TECHNOLOGY LAW J. 1 (2005). Reviews the RIAA P2P litigation as a form of "reverse private attorney general" action; provides a regression analysis of P2P connectivity data and suggests that the RIAA litigation has failed to change public norms about file sharing; suggests alternatives to reverse private attorney general litigation for the enforcement of intellectual property rights.

The Penguin's Genome, or Coase and Open Source Biotechnology, 18 HARVARD JOURNAL OF LAW AND TECHNOLOGY 168 (2004). Reviews commons theory and norms in biotechnology research; examines whether open source production models can help preserve the biotechnology research commons; proposes a central biotechnology database as a means of reducing transaction costs associated with intellectual property licensing.

Authored Amicus Briefs

Apple v. FBI: Brief in Support of Neither Party, with Prof. Justin (Gus) Hurwitz (submitted but not filed), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2746100

Brief in Support of Massachusetts State Police Association, *Commonwealth v. Leon Gelfatt*, 468 Mass. 512 (2014) (concerning compelled disclosure of decryption keys).

Brief in Support of Neither Party, with Prof. Erik Lillquist, *FTC v. Actavis*, 133 S. Ct. 2223 (2013) (concerning rule of reason in Hatch-Waxman reverse payment settlement cases).

Recent Popular Publications

ICANN's Transition Proposal, New Jersey Law Journal, June 17, 2016.

Recent Developments in Cybersurveillance, New Jersey Law Journal, May 13, 2016.

The Apple iPhone Unlock Showdown: What is at Stake?, New Jersey Law Journal, March 7, 2016.

Preparing for Cybersecurity Incidents: Insurance Considerations, PLI Think Like a Lawyer Talk Like a Geek 2016.

Recent Presentations

New Jersey Institute for Continuing Legal Education, "Cybersecurity for Law Firms," New Brunswick, New Jersey, May 2016.

George Mason University Law School, Philosophy of Intellectual Property Roundtable, Discussant, Jekyll Island, Georgia, May 2016.

Compliance Week, "Cybersecurity Compliance Issues," New York, NY, May 2016.

George Mason University Law School, Program on Economics & Privacy, Digital Information Policy Scholars Conference, "Data Breaches and the Economic Loss Doctrine in the Payment Card Industry," April 2016.

South Carolina Law Review, Symposium: Civil Liability for Data Breaches, "Data Breach Litigation Update," February 2016.

Practicing Law Institute, "Dealing With Hackers," New York, NY, November 2015.

Itechlaw 2014 World Technology Law Conference, New York, NY, May 2014: "Dealing With Hackers."

Religious Legal Theory Conference, Emory Law School, March 2014: "The NSA is/and the Antichrist."

Seton Hall University, Gibbons Institute of Law, Science & Technology, September, 2013, "Federal Circuit Year in Review."

New York State Wireless Association Meeting, New York, NY, June 2013, "Mobile Payment Systems and Cybersecurity."

American Bar Association Webinar, May 2013, "Cyber Threats and Network Security Countermeasures: Keeping Your Intellectual Property and Secrets Safe."

University of Notre Dame Law School, South Bend, IN, Law and the Human Person Roundtable, April 2013, Organizer and Moderator.

University of St. Thomas Law School, Minneapolis, MN, Intellectual Property and Religious Thought Conference, March 2013: “Towards a Theology of Intellectual Property as Social Relations.”

New Jersey Prosecutors’ College, Atlantic City, NJ, September 2012: “Cybersecurity Law Update.”

Practicing Law Institute, New York, NY, November, 2012: “Think Like a Lawyer, Talk Like a Geek: Dealing With Hackers.”

U.S. Military Academy, West Point, NY, April 2012: “Cybersecurity, Cyberwar, Cyberterrorism, and Civil Rights.”

Internet Law Works in Progress Conference, New York Law School, March 2012: “Does the Communications Act of 1934 Provide an Internet Kill Switch?”

L'École Supérieure Catholique de Droit de Jérémie, Haiti, March 2012: “International Intellectual Property and Access to Medicines.”

Religious Legal Theory Conference, Pepperdine Law School, California, February 2012: “Beyond Bits, Memes and Utility Machines: Intellectual Property, Theology, and Metaphysics.”

New Jersey Public Defender’s CLE, Trenton, November 2011: “Computer Crimes Update.”

New Jersey Marine Corps Reserve Terrorism Symposium, New Jersey Institute of Technology, October 2011: “Computer Crimes and Cyber-Terrorism.”

New Jersey Prosecutor’s College, Atlantic City, September 2011: “Computer Crimes Update.”

Religious Legal Theory Conference, St. John’s University Law School, October 2011: “Law and the Theology of Hope.”

Internet Law Works in Progress Conference, Santa Clara Law School, January 2011: “Cybersecurity and Executive Power.”

Biosimilars Roundtable, Seton Hall University Law School, September, 2010: Moderator, Panel Discussion on Future Prospects for Biosimilars Legislation.

Federal Circuit Update, Seton Hall Law School, February, 2010: “Survey of Recent Federal Circuit Case Law.”

Religious Legal Theory: The State of the Field Conference, Seton Hall Law School, November, 2009: “Law, Neuroscience, and the Soul: Towards a Critical Realist Account of Law and Neurobiology.”

Works in Progress Intellectual Property Conference, Seton Hall Law School, October 2009: “Patents, Trade Secrets, and Social Relations.”

Intellectual Property Scholars’ Conference, Cardozo Law School, August 2009: “Rational Competition Policy and Reverse Payment Settlements Under the HatchWaxman Act.”

Symposium, *Second Summer Institute in Intellectual Property, Agricultural Biotechnology, and Agricultural Sciences*, Drake University Law School, June 2, 2009, “State Sovereignty, Flu Viruses, and Intellectual Property.”

Symposium Panel Moderator, “The Attacks Upon Statutory Damages and the ‘Making Available’ Right: The Possible Aftereffects on Big and Small Business Litigation Strategies,” Fordham University Law School, November 21, 2008.

Marquette University Law School Faculty Colloquium, November 20, 2008, “Patent Damages Reform and the Shape of Patent Law.”

Symposium, *Preparing for a Pharmaceutical Response to Pandemic Flu*, Seton Hall Law School, October 2008: “State Sovereignty, Flu Viruses, and Intellectual Property.”

Works in Progress Intellectual Property Conference, Tulane Law School, September 2008: “Patent Damages Reform and the Shape of Patent Law.”

PCSE Workshop, *Property Transactions and Transitions in an Age of Globalization*, Chapman University Law School, February 2008: “Intellectual Property as Social Relations.”