

SHYAMKRISHNA BALGANESH

Professor of Law
Columbia Law School
435 West 116th Street
New York, NY 10027
(773) 964 5457
sbalganesh@law.columbia.edu

ACADEMIC POSITIONS

Columbia Law School, New York, NY

Appointments:

Professor of Law, 2021-
Samuel Rubin Visiting Professor of Law, Fall 2019

Teaching:

Property, Introduction to Intellectual Property

University of Pennsylvania Law School, Philadelphia, PA

Appointments:

Professor of Law, 2014-2020
Assistant Professor of Law, 2009-2014
Co-Director, Center for Technology, Innovation & Competition, 2012-2020
Co-Director, Penn Center for Asian Law, 2014-2020

Teaching:

Property, Copyright, Introduction to Intellectual Property, Advanced Copyright,
Copyright Theory, Modern American Legal Thought, Private Law and National
Building, Patterns of Logic in the Law

Awards:

Robert A. Gorman Award for Excellence in Teaching, 2017
A. Leo Levin Award for Teaching Excellence in an Introductory Course, 2015

Service:

Chair, Faculty Appointments Committee, 2015-16
Chair, Educational Programs Committee, 2017-18
Member, Dean Search Committee, 2014-15
Co-chair, Faculty Workshops Committee, 2010-11, 2013-19
Member, Faculty Appointments Committee, 2013-14

University of Chicago Law School, Chicago, IL

Bigelow Fellow & Lecturer in Law, 2007-2009

EDUCATION

Yale Law School, New Haven, CT

J.D., 2007

Yale Law Journal, Articles & Essays Editor, 2006-07; Editor, 2005-06
Information Society Project (ISP), Student Fellow
Research Assistant, Professor Yochai Benkler
Yale University, Teaching Fellow

Balliol College, Oxford University, Oxford, U.K.

M.Phil, 2005; *B.C.L.* (Distinction), 2004

Rhodes Scholar, 2003-2005

Oxford University Commonwealth Law Journal, Editor, 2004-05; Associate Editor, 2003-04

National Law School of India University, Bangalore, India

B.A., LL.B. (Hons.), 2003

Graduated first in class; Medals for Highest GPA, Intellectual Property, and Ethics

Faculty Honors List for Exceptional Academic Achievement

Council of Student Scholars for Excellence (Honors Society), President

Student Bar Review, Chief Editor

PUBLICATIONS

Treatise Sections

§§2A-05 (Baker v. Selden), 2A-06 (The Current Significance of Baker v. Selden), 2A-07 (The Patent/Copyright Overlap) & 2A-08[E] (Photographs), in MELVILLE B. NIMMER & DAVID NIMMER, *NIMMER ON COPYRIGHT* (2016) (sections co-authored with David Nimmer).

Edited Volumes

LIMITATIONS AND EXCEPTIONS TO COPYRIGHT LAW IN COMPARATIVE PERSPECTIVE (Cambridge University Press, forthcoming 2020) (with Wee Loon Ng-Loy and Haochen Sun).

THE LEGACY OF WESLEY HOHFELD: EDITED MAJOR WORKS, SELECT PERSONAL PAPERS, AND ORIGINAL COMMENTARIES (Cambridge University Press, forthcoming 2020) (with Ted Sichelman and Henry Smith).

INTELLECTUAL PROPERTY AND THE COMMON LAW (Cambridge University Press 2013).

Articles & Essays

Legal Internalism in Modern Histories of Copyright, 134 *Harvard Law Review* (forthcoming 2021) (with Taisu Zhang).

Restatements of Statutory Law: The Curious Case of the Restatement of Copyright, 44 *Columbia Journal of Law and the Arts* (forthcoming 2021) (with Peter Menell and David Nimmer).

Long Live the Common Law of Copyright!: *Georgia v. Public.Resource.Org., Inc.* and the Debate over Judicial Role in Copyright, 120 *Columbia Law Review Online* (forthcoming 2021).

The Use of Technical Experts in Software Copyright Cases: Rectifying the Ninth Circuit's "Nutty" Rule, 35 *Berkeley Technology Law Journal* (forthcoming 2021) (with Peter S. Menell).

Copyright as Legal Process: The Transformation of American Copyright Law, 168 *University of Pennsylvania Law Review* 1101 (2020).

Privative Copyright, 73 *Vanderbilt Law Review* 1 (2020).

The Genius of Common Law Intellectual Property, 49 *Journal of Legal Studies* (forthcoming 2020).

Private Law Statutory Interpretation, 92 *Southern California Law Review* 949 (2019) (Symposium).

Copyright as Market Prospect, 166 *University of Pennsylvania Law Review* 443 (2018).

Causing Copyright, 117 *Columbia Law Review* 1 (2017).

The Immanent Rationality of Copyright Law, 115 *Michigan Law Review* 1047 (2017) (Review Essay).

The Folklore and Symbolism of Authorship in American Copyright Law, 54 *Houston Law Review* 403 (2016) (Symposium).

The Questionable Origins of the Copyright Infringement Analysis, 68 *Stanford Law Review* 791 (2016).

Copyright and Good Faith Purchasers, 104 *California Law Review* 269 (2016).

Debunking the Myth of the Copyright Troll Apocalypse, 100 *Iowa Law Review Online* 43 (2016) (with Jonah B. Gelbach).

Equity's Unstated Domain: The Role of Equity in Shaping Copyright Law, 163 *University of Pennsylvania Law Review* 1859 (2015) (with Gideon Parchomovsky) (Symposium).

Codifying the Common Law of Property in India: Crystallization and Standardization as Strategies of Constraint, 63 *American Journal of Comparative Law* 33 (2015).

Structure and Value in the Common Law, 163 *University of Pennsylvania Law Review* 1241 (2015) (with Gideon Parchomovsky).

Foreword: The Constraint of Legal Doctrine, 163 *University of Pennsylvania Law Review* 1843 (2015).

Unplanned Coauthorship, 100 *Virginia Law Review* 1683 (2014).

Judging Similarity, 100 *Iowa Law Review* 267 (2014) (with Irina Manta and Tess Wilkinson-Ryan).

Copyright Infringement Markets, 113 *Columbia Law Review* 2277 (2013).

Gandhi and Copyright Pragmatism, 101 *California Law Review* 1705 (2013).

Stewarding the Common Law of Copyright, 60 *Journal of the Copyright Society of U.S.A.* 103 (2013).

The Uneasy Case Against Copyright Trolls, 86 *Southern California Law Review* 723 (2013).

The Normativity of Copying in Copyright Law, 62 *Duke Law Journal* 203 (2012).

The Obligatory Structure of Copyright Law: Unbundling the Wrong of Copying, 125 *Harvard Law Review* 1664 (2012) (Symposium).

Quasi-Property: Like, But Not Quite Property, 160 *University of Pennsylvania Law Review* 1889 (2012) (Symposium).

The Uncertain Future of the Hot News Misappropriation After *Barclay's Capital, Inc. v. Theflyonthewall.com*, 112 *Columbia Law Review Sidebar* 134 (2012).

“Hot News”: The Enduring Myth of Property in News, 111 *Columbia Law Review* 419 (2011).

The Pragmatic Incrementalism of Common Law Intellectual Property, 63 *Vanderbilt Law Review* 1543 (2010).

Tiered Originality and the Dualism of Copyright Incentives, 95 *Virginia Law Review In Brief* 67 (2009).

Foreseeability and Copyright Incentives, 122 *Harvard Law Review* 1569 (2009).

Debunking Blackstonian Copyright, 118 *Yale Law Journal* 1126 (2009) (Review Essay).

Demystifying the *Right to Exclude*: Of Property, Inviolability, and Automatic Injunctions, 31 *Harvard Journal of Law & Public Policy* 593 (2008).

Rethinking Copyright: Property Through the Lenses of Unjust Enrichment and Unfair Competition, 156 *University of Pennsylvania Law Review Pennumbra* 345 (2008).

The Social Costs of Property Rights in Broadcast (and Cable) Signals, 22 *Berkeley Technology Law Journal* 1303 (2008).

Common Law Property Metaphors on the Internet: The Real Problem with the Doctrine of Cybertrespass, 12 *Michigan Telecommunications & Technology Law Review* 265 (2006).

Property along the Tort Spectrum: Trespass to Chattels and the Anglo-American Doctrinal Divergence, 35 *Common Law World Review* 135 (2006).

Copyright and Free Expression: The Convergence of Conflicting Normative Frameworks, 4 *Chicago-Kent Journal of Intellectual Property* 45 (2004).

Book Chapters

Intellectual Property and Redressive Autonomy, in 1 OXFORD STUDIES IN PRIVATE LAW THEORY (Paul Miller & John Oberdiek eds., forthcoming 2020).

The In Rem/In Personam Distinction and Partitioning for Persistence, in THE LEGACY OF WESLEY HOHFELD: EDITED MAJOR WORKS, SELECT PERSONAL PAPERS, AND ORIGINAL COMMENTARIES (Shyamkrishna Balganesh, Henry Smith and Ted Sichelman eds. forthcoming 2020).

The “Common Law” in the Law and Economics of Intellectual Property, in 1 RESEARCH HANDBOOK ON THE ECONOMICS OF INTELLECTUAL PROPERTY LAW 508 (Ben Depoorter & Peter

Menell eds., 2019).

The Constitutionalisation of Indian Private Law, *in* THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 680 (Sujit Choudhry, Madhav Khosla & Pratap Mehta eds. 2016).

Fair Use and Fair Dealing: Two Approaches to Exceptions and Limitations in Copyright Law, *in* INDIA AS A PIONEER IN INNOVATION (forthcoming 2016) (with David Nimmer).

Alienability and Copyright Law, *in* CONCEPTS OF PROPERTY IN INTELLECTUAL PROPERTY 161 (Helena R. Howe & Jonathan Griffiths eds. 2013).

Introduction: Exploring an Unlikely Connection, *in* INTELLECTUAL PROPERTY AND THE COMMON LAW 1 (Shyamkrishna Balganesh ed. 2013).

The Normative Structure of Copyright Law, INTELLECTUAL PROPERTY AND THE COMMON LAW 313 (Shyamkrishna Balganesh ed. 2013).

The Role of Unfair Competition in the Common Law, *in* INTELLECTUAL PROPERTY AND THE COMMON LAW 484 (Shyamkrishna Balganesh ed. 2013) (with Gideon Parchomovsky).

Work in Progress

On Owning the Law

The Transformation of American Copyright Law: From Private Right to Legal Process (book)

The “Black-Letter” Law of a Statute

OTHER EXPERIENCE

Cravath, Swaine & Moore LLP, New York, NY
Summer Associate, 2006

World Bank, Washington, D.C.
Legal Consultant, 2005

Hon. V.N. Khare, Supreme Court of India, New Delhi, India
Law Clerk, January-March 2002

PROFESSIONAL SERVICE

Elected Member, The American Law Institute (ALI), 2017-

Adviser, Restatement of the Law, Copyright, 2015-

Referee: Journal of Legal Studies, Journal of Legal Analysis, Law & Philosophy, Law & Social Inquiry, Asian Journal of Legal Studies, Oxford University Press, Cambridge University Press, Yale University Press, Harvard Law Review, Columbia Law Review, Stanford Law Review, University of Pennsylvania Law Review.

SYMPOSIA

Co-organizer, *Fifth Copyright Scholarship Roundtable*, University of Pennsylvania Law School,

October-November, 2020.

Co-organizer, *Fourth Copyright Scholarship Roundtable*, University of Pennsylvania Law School, June 20-21, 2019.

Co-organizer, *Third Copyright Scholarship Roundtable*, University of Pennsylvania Law School, June 8-9, 2018.

Co-organizer, *Second Copyright Scholarship Roundtable*, University of Pennsylvania Law School, March 24-25, 2017.

Co-organizer, *Symposium on the Legacy of Wesley Hohfeld*, Yale Law School, New Haven, CT, October 14-15, 2016.

Co-organizer, *Conference on Limitations and Exceptions in Copyright Law in Comparative Perspective*, National University of Singapore, Singapore, July 21-22, 2016.

Co-organizer, *First Copyright Scholarship Roundtable*, University of Pennsylvania Law School, November 6-7, 2015.

Faculty Organizer, *Symposium: The New Doctrinalism: Legal Realism and Legal Doctrine*, University of Pennsylvania Law School, October 24-25, 2014.

Co-organizer, *Symposium: Property in South Asia: Law, History, Politics*, University of Pennsylvania Law School, April 18-19, 2014

Organizer, *Second Private Law Consortium*, University of Pennsylvania Law School, May 11-12, 2014.

Organizer, *Symposium: Intellectual Property and the Common Law*, University of Pennsylvania Law School, May 6-7, 2011.

Co-organizer, *Symposium: New Dimensions in Property Theory*, University of Pennsylvania Law School, November 6, 2011.

PRESENTATIONS

2020

Faculty Workshop, UC-Berkeley Law School, Berkeley, CA (“Copyright as Legal Process”).

Faculty, Workshop, Chicago-Kent Law School, Chicago, IL (“Legal Internalism in Modern Histories of Copyright”).

Private Law Theory Workshop, Notre Dame Law School, South Bend, IN (“Legal Internalism in Modern Histories of Copyright”).

Faculty Ad Hoc Workshop, University of Pennsylvania Law School, Philadelphia, PA (“Legal Internalism in Modern Histories of Copyright”).

2019

Workshop for the *Oxford Handbook on Private Law Theory*, London, U.K. (“Intellectual Property and Redressive Autonomy”).

Fourth Copyright Scholarship Roundtable, University of Pennsylvania Law School,

Philadelphia, PA (“Censorial Copyright”).

NYU Tri-State IP Workshop, NYU School of Law, New York, NY (“Censorial Copyright”).

CPIP Roundtable on Philosophy and IP, Antonin Scalia School of Law, Arlington, VA (“Censorial Copyright”).

2018

Intellectual Property Scholars Conference, U.C.-Berkeley Law School, Berkeley, CA (“Censorial Copyright”).

NYU Tri-State IP Workshop, NYU School of Law, New York, NY (“The Evolution of American Copyright Law”).

Faculty Workshop, Brooklyn Law School, Brooklyn, NY (“Copyright as ‘Legal Process’”).

Conference Honoring 50 Years of Scholarship of Richard Epstein, University of Chicago Law School, Chicago, IL (“The Genius of Common Law Intellectual Property”).

Conference on the Kinship Between Copyright and Patent Law, University of Pennsylvania Law School, Philadelphia, PA (“The Law/Fact Distinction in Patent and Copyright Law”) (with Polk Wagner).

2017

Intellectual Property Scholars Conference, Cardozo Law School, New York, NY (“Copyright as Legal Process”).

UCLA Intellectual Property & Entertainment Law Colloquium, UCLA School of Law, Los Angeles, CA (“Copyright as Legal Process”).

Copyright Society of U.S.A – Northwest Chapter, Seattle, WA (“Understanding the Copyright Infringement Analysis”).

FJC-U.C. Berkeley Law School Conference on IP in the New Technological Age, U.C. Berkeley School of Law, Berkeley, CA (“Digital Copyright”).

Faculty Workshop, University of Washington School of Law, Seattle, WA (“Copyright as Market Prospect”).

Book Symposium, *The Evolution of American Copyright Law*, CASRIP, University of Washington School of Law, Seattle, WA.

Faculty Workshop, Notre Dame Law School, South Bend, IN (“Copyright as ‘Legal Process’”).

Intellectual Property Colloquium, St. John’s University School of Law, New York, NY (“Copyright as ‘Legal Process’”).

Conference on The Art and Science of the IP Deal, University of Washington, Seattle, WA (“Copyright Infringement Markets”).

Intellectual Property Colloquium and Faculty Workshop, Loyola Los Angeles Law School, Los Angeles, CA (“Copyright as Market Prospect”).

USC Intellectual Property Institute, University of Southern California—Gould School of Law, Los Angeles, CA (Panelist, “Pushing the Boundaries of Intellectual Property”).

Roundtable on the Copyright Small Claims Court Proposal, U.C. Berkeley School of Law, Berkeley, CA (Panelist and Discussant).

2016

Fourth Annual Global Patent Law Conference, Waseda Law School, Tokyo, Japan (“Patent Exhaustion and Comparisons to Copyright”).

Workshop on the Legacy of Wesley Hohfeld, Yale Law School, New Haven, CT (“The In

Rem/In Personam Distinction and Partitioning for Persistence”) (with Leo Katz).

Conference on Limitations and Exceptions to Copyright Law in Comparative Perspective, National University of Singapore, Singapore (“Judicial Culture and Copyright Limitations and Exceptions”).

Public Lecture, ARCIALA, Singapore Management University, Singapore (“What Can Copyright Learn from the Common Law?”).

Private Law Consortium, University of Oslo, Oslo, Norway, (“Causing Copyright”).

Conference on Intellectual Property in all the New Places, Texas A&M Law School, Fort Worth, Texas (“Copyright Law and the Challenge of the Monkey Selfie”).

Public Lecture, Waseda Law School, Tokyo, Japan (“Causing Copyright”).

Faculty Workshop – Center for Information Law and Policy, University of Toronto, Toronto, Canada (“Causing Copyright”).

University of Pennsylvania Law School Board of Overseers Meeting, Miami, FL (“A Common Law Approach to Copyright”).

Law and Technology Colloquium, Georgetown University Law School, Washington, D.C. (“Causing Copyright”).

Faculty Workshop, Vanderbilt Law School, Nashville, TN (“The Questionable Origins of the Copyright Infringement Analysis”).

Public Law and Legal Theory Workshop, University of Chicago Law School, Chicago, IL (“The Questionable Origins of the Copyright Infringement Analysis”).

2015

The First India Conference on Innovation, Intellectual Property and Competition, Indian Institute of Management, Bangalore, India (“Copyright as Innovation Policy”).

Copyright Scholarship Roundtable, University of Pennsylvania Law School, Philadelphia, PA (“The Questionable Origins of the Copyright Infringement Analysis”).

Penn Law Faculty Retreat, Philadelphia, PA (“The Questionable Origins of the Copyright Infringement Analysis”).

Authors’ Workshop for the Research Handbook on the Law and Economics of IP, UC-Berkeley School of Law, Berkeley, CA (“The Common Law in Intellectual Property”).

Intellectual Property Scholars Conference, DePaul Law School, Chicago, IL (“The Questionable Origins of the Copyright Infringement Analysis”).

Faculty Workshop, Hong Kong University, Hong Kong (“Copyright and Good Faith Purchasers”).

Faculty Workshop, Academia Sinica, Taipei, Taiwan (“Copyright and Good Faith Purchasers”).

University of Illinois IP Colloquium, Champaign, IL (“Copyright and Good Faith Purchasers”).

N.Y.U. Law Tri-State Intellectual Property Workshop, New York, NY (“Copyright and Good Faith Purchasers”).

Penn Law Ad Hoc Faculty Workshop, Penn Law School, Philadelphia, PA (“Copyright and Good Faith Purchasers”).

2014

Symposium: “The New Doctrinalism,” University of Pennsylvania Law School, Philadelphia, PA (“Equity’s Unstated Domain: The Role of Equity in Shaping Copyright Law”).

North American Workshop on Private Law Theory (NAWPLT), Harvard Law School, Cambridge, MA (“Structure and Value in the Common Law”).

IP Scholarship Workshop/Seminar, UC-Berkeley School of Law, Berkeley, CA (“Unplanned Coauthorship”).

Intellectual Property Scholars Conference, UC-Berkeley School of Law, Berkeley, CA (“Unplanned Coauthorship”).

Authors’ Workshop for the Oxford Handbook on the Indian Constitution, New Delhi, India (“The Constitutionalization of Indian Private Law”).

Conference on “Value Pluralism in Intellectual Property Law,” Hong Kong University Faculty of Law, Hong Kong (“Value Pluralism and Incommensurability in Intellectual Property: Structural Solutions”).

14th Annual Meeting of the American Law & Economics Association, University of Chicago Law School, Chicago, IL (“Judging Similarity”) (with Irina Manta and Tess Wilkinson-Ryan).

Duke Law School Faculty Workshop, Duke Law School, Durham, NC (“Unplanned Coauthorship”).

Public Lecture Series: Introduction to American Law, Penn Law School, Philadelphia, PA (“The Distinctiveness of American Property Law”).

N.Y.U. Law Tri-State Intellectual Property Workshop, New York, NY (“Unplanned Coauthorship”).

Boston University School of Law IP Theory Workshop, Boston, MA (“Unplanned Coauthorship”).

Columbia Law School IP Speakers Series, New York, NY (“Laches and the Copyright Act”).

2013

Intellectual Property Scholars Conference, Cardozo Law School, New York, NY (“Copyright Law and Good Faith Purchasers”).

Conference on “Understanding Entrepreneurship,” Bar-Ilan University Faculty of Law, Jerusalem, Israel (“Copyright Trolls”).

Penn Law Ad Hoc Faculty Workshop, Penn Law School, Philadelphia, PA (“Gandhi and Copyright Pragmatism”).

N.Y.U. Law Tri-State Intellectual Property Workshop, New York, NY (“Copyright Infringement Markets”).

AALS Annual Meeting, Panel: Art in an Age of Digital Convergence, New Orleans, LA (“Overcoming *Bleistein*”).

2012

U.C. Davis Law School Faculty Workshop, Davis, CA (“Gandhi, Freedom, and the Dilemmas of Copyright Law”).

Yale Law School Information Society Project Reunion Conference, New Haven, CT (“Gandhi, Freedom, and the Dilemmas of Copyright Law”).

Intellectual Property Scholars Conference, Stanford Law School, Palo Alto, CA (“The Uneasy Case Against Copyright Trolls”).

Harvard Law School – Progressive Property Conference, Cambridge, MA (“Gandhi, Freedom, and the Dilemmas of Copyright Law”).

American IP Law Association (AIPLA) Spring Meeting, Austin, TX (“Understanding Copyright Trolls”).

Fordham Law School CLIP Workshop, New York, NY (“The Uneasy Case Against Copyright

Trolls”).

Public Lecture, Centre for Internet & Society, India, Bangalore, India (“Gandhi, Freedom, and the Dilemmas of Copyright Law”).

2011

Penn Law Faculty Workshop, Philadelphia, PA (“Wrongful Copying”).

Penn Law School Symposium on New Dimensions in Property Theory, Philadelphia, PA (“Quasi-Property: Like, But Not Quite Property”).

Harvard Law School Symposium on the New Private Law, Cambridge, MA (“The Obligatory Structure of Copyright Law: Unbundling the Wrong of Copying”).

Chicago-Kent Intellectual Property Colloquium, Chicago, IL (“‘Hot News’: The Enduring Myth of Property in News”).

Loyola Los Angeles IP Theory Colloquium, Los Angeles, CA (“Wrongful Copying”).

Penn Internet & Media Program (IMP) Lunchtime Talk, Philadelphia, PA (“‘Hot News’: The Enduring Myth of Property in News”).

2010

UC-Berkeley Intellectual Property Scholars Conference, Berkeley, CA (“‘Hot News’: The Enduring Myth of Property in News”).

Google Policy Talk, Mountain View, CA (“‘Hot News’: The Enduring Myth of Property in News”).

UCLA Media, Entertainment, and Intellectual Property Law Colloquium, Los Angeles, CA (“‘Hot News’: The Enduring Myth of Property in News”).

Indiana University-Maurer School of Law, Bloomington, IN (“The Pragmatic Incrementalism of Common Law Intellectual Property”).

Wharton Business School Legal Studies Workshop, Philadelphia, PA (“The Pragmatic Incrementalism of Common Law Intellectual Property”).

Penn Law Faculty Workshop, Philadelphia, PA (“‘Hot News’: The Enduring Myth of Property in News”).

Association of Law, Property & Society Annual Meeting (ALPS), Washington, D.C. (“The Pragmatic Incrementalism of Common Law Intellectual Property”).