

KRISTELIA GARCÍA

University of Colorado Law School • 401 UCB • Boulder, CO 80309 • 303-735-6618 • kristelia@colorado.edu
SSRN: <http://ssrn.com/author=1885418>

ACADEMIC APPOINTMENTS

- UNIVERSITY OF COLORADO LAW SCHOOL**, Boulder, Colorado 2014-Present
Associate Professor
Director of the Content Initiative at the Silicon Flatirons Center for Law, Technology, and Entrepreneurship
- YALE LAW SCHOOL**, New Haven, Connecticut 2012-Present
Affiliated Fellow at the Information Society Project
- THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL**, Washington, DC 2012-2014
Frank H. Marks Fellow in Intellectual Property & Visiting Associate Professor

EDUCATION

- YALE LAW SCHOOL**, New Haven, Connecticut, J.D. 2003
Yale Journal of Law & Technology, Editor-in-Chief
John M. Olin Fellow in Law, Economics and Public Policy
- COLUMBIA UNIVERSITY**, New York, New York, B.A., *cum laude*, Economics 2000
Kluge Scholar (four-year scholarship for academic achievement)
Dean's List (all semesters)
King's Crown Award (for leadership in public service)

PUBLICATIONS AND WORKS-IN-PROGRESS

ARTICLES

- A Reconsideration of Copyright's Term***, 71 ALABAMA L. REV. 351 (2019)(with Justin McCrary)
- Copyright Arbitrage***, 107 CALIF. L. REV. 199 (2019)
- Facilitating Competition by Remedial Regulation***, 31 BERKELEY TECH. L. J. 183 (2016)
- Penalty Default Licenses: A Case for Uncertainty***, 89 N.Y.U. L. REV. 1117 (2014)
- Private Copyright Reform***, 20 MICH. TELECOMM. & TECH. L. REV. 1 (2013)

CHAPTERS, ESSAYS & OTHER WRITINGS

- Contracts v. Copyright: Contemporary Musician Income Streams*** (forthcoming chapter in *Oxford Handbook of Music Law & Policy*, OXFORD UNIVERSITY PRESS 2020)
- Technological Rights Accretion***, 36 YALE J. ON REG.: NOTICE & COMMENT (Sept. 19, 2018)

Improving the Quality & Consistency of Copyright Infringement Analysis in Music, BERKELEY TECH. L.J. COMMENTARIES (Jan. 23, 2018)

Royalty Securitization, HARVARD J. LAW & TECH. DIGEST (Oct. 23, 2017)

WORKS-IN-PROGRESS

Super-Statutory Contracting

The conventional wisdom is that property rules induce more (and more efficient) contracting, and that when faced with rigid property rules, intellectual property owners will contract into more flexible liability rules. A series of recent, private copyright deals show some intellectual property owners doing just the opposite: faced with statutory liability rules, they are contracting for more protection than that dictated by law, something this Article calls “super-statutory contracting”—either by opting for a stronger, more tailored liability rule, or by contracting into property rule protection. Through a series of deal analyses, this Article explores this counterintuitive phenomenon, and updates seminal thinking on property entitlements and private ordering in the intellectual property context.

While law and economics scholars have long grappled with the question of whether property rules or liability rules are preferable, and when, they have traditionally ignored a key lever: “perceived control,” or a rights holder’s impression of their ability to grant or withhold permission to use their work, and/or to name their price for such use. In addition to proposing a recalibration of the relative importance of consolidation, transaction costs, defaults, and damages, this Article identifies and describes perceived control as an essential factor in the licensing enterprise. This has significant implications for legislators and policymakers seeking to better align incentives between licensors and licensees, and for administrators tasked with term and rate setting.

Encouraging Infringement

The deterrence of copyright infringement and the evils of piracy have long been a primary focus of both popular and scholarly inquiry. The conventional view is that infringement must be curbed and/or punished in order for copyright to fulfill its purported goals of encouraging creation and ensuring access to works. This Essay challenges this view by destabilizing long-held but problematic assumptions about the relationship between copyright law’s purported goals and its treatment of infringement. Specifically, I argue that some rightsholders encourage infringement, both explicitly and implicitly, in a variety of different situations and for a variety of different reasons. Through a series of case studies, this Essay describes the impetuses and normative implications of this counterintuitive—but not so unusual—phenomenon.

Recognition of rightsholder-encouraged infringement in copyright is interesting not only for its unexpectedness, but also for the broader point that its existence suggests: we have an impoverished descriptive account of why some laws operate the way that they do. This is particularly unsettling in an area like copyright, where advocates are sharply divided along policy lines. This Essay is an important step toward a positive theory of copyright—one that recognizes the underappreciated role that private parties play in policymaking.

Copyright and Economic Viability: Evidence from the Music Industry (with James Hicks and Justin McCrary)

Copyright provides a long term of legal excludability, ostensibly to encourage the production of new creative works. The extent to which this term aligns with the economic incentives of creators has been subject to vigorous theoretical debate. Using a novel longitudinal dataset of music sales and streaming, we assess the economic viability of commercial music. We find that the average work has an extremely short sales “half life”—on the order of months, rather than years or decades. We also find suggestive evidence that new forms of distribution (such as subscription streaming services) extend the shelf-life of commercial music.

SELECTED AWARDS, GRANTS AND FELLOWSHIPS

The Honorable Nancy F. Atlas Intellectual Property American Inn of Court Sponsored Scholarship Grant (SSG) for the Legal Academy (in support of <i>Copyright Arbitrage</i>)	2018
Fellow, Institute for Intellectual Property & Information Law (IPIL) Institute	2015
Mark Twain Copyright Fellowship (in support of <i>Facilitating Competition by Remedial Regulation</i>)	2015
Leonardo da Vinci Fellowship Research Grant (in support of empirical research on artists' rights)	2013

SELECTED SCHOLARLY PRESENTATIONS

Super-Statutory Contracting

- Cardozo Law School Faculty Colloquium (New York, NY – Sept 2019)

A Reconsideration of Copyright's Term

- Annual Congress of the Society for Economic Research on Copyright Issues (SERCI) (Faculté d'économie, Montpellier, France – July 2019)
- Copyright Scholarship Roundtable (University of Pennsylvania Law School, Philadelphia, PA – June 2019)
- Annual Meeting of the American Law & Economics Association (ALEA)(New York University Law School – May 2019)
- Intellectual Property, Science & Technology Workshop (University of Texas Law School, Austin, TX – December 2018)
- Intellectual Property Scholars Conference (University of California Berkeley School of Law, CA – August 2018)
- Intellectual Property Scholars Roundtable (Vanderbilt Law School, Nashville, TN – April 2017)
- University of Houston Law Center Colloquium (Houston, TX – April 2017)

Copyright Arbitrage

- Loyola Law School's IP Speaker Series (Loyola Law School, Los Angeles, CA – April 2019)
- Copyright Scholarship Roundtable (University of Pennsylvania Law School, Philadelphia, PA – June 2018)
- Law & Technology Speaker Series (Yale Law School, New Haven, CT – April 2018)
- St. Louis University Law School Faculty Workshop (St. Louis, MO – November 2017)

Facilitating Competition by Remedial Regulation

- Copyright Scholarship Roundtable (University of Pennsylvania Law School, Philadelphia, PA – November 2015)
- Spangenberg Center for Law, Technology & the Arts Faculty Colloquium (Case Western Reserve University School of Law, Cleveland, OH - November 2015)
- Brigham Young University Law and Entrepreneurship Colloquium (Provo, UT - October 2015)
- Intellectual Property Scholars' Conference (DePaul University Law School, Chicago, IL - August 2015)

- Searle Center Cable Academic Workshop (Northwestern University Law School, Chicago, IL – May 2015)
- Intellectual Property Law Colloquium (Marquette University Law School, Milwaukee, WI - April 2015)
- Intellectual Property in the Trees Workshop (Lewis & Clark Law School, Portland, OR - November 2014)
- Colorado Bar Association Intellectual Property Section Meeting (Denver, CO - September 2014)
- Intellectual Property Scholars Conference (University of California Berkeley School of Law, Berkeley, CA - August 2014)
- Mark Twain Copyright Fellowship Conference II (George Mason University School of Law, Arlington, VA - June 2014)
- Intellectual Property Scholars Roundtable (Drake University Law School, Des Moines, IA - March 2014)
- Mark Twain Copyright Fellowship Conference I (New Orleans, LA – January 2014)

Penalty Default Licenses: A Case for Uncertainty

- Intellectual Property Scholars' Conference (Benjamin N. Cardozo School of Law, New York, NY - August 2013)
- Searle Center Research Roundtable on the Law and Economics of Digital Markets (Northwestern University School of Law, Chicago, IL – July 2013)
- World Intellectual Property Organization (WIPO) Advanced Research Forum on Intellectual Property Rights (Geneva, Switzerland - May 2013)
- Georgetown-George Washington Pre-Tenure Early Stage Projects Workshop (Georgetown University Law Center, Washington, DC - May 2013)

Private Copyright Reform

- Intellectual Property Scholars Roundtable (Drake University Law School, Des Moines, IA - April 2013)
- Works-in-Progress Intellectual Property Conference (Seton Hall Law School, Newark, NJ – February 2013)
- Scholarship and Teaching Development Workshop: Sharing Scholarship, Building Teachers (Albany Law School, Albany, NY – February 2013)

Contract v. Copyright: Contemporary Musician Income Streams

- The New Music Ecosystem Conference (University of Washington School of Law, Seattle, WA – May 2018)

The Effect of Survivorship Bias on a Winner-Take-All Market

- “Copyright’s Excess: Money and Music in the U.S. Recording Industry” Symposium (Texas A&M University School of Law – February 2019)

Content ID, or, Who Needs the DMCA?

- Digital Millennium Copyright Act at 20 Symposium (Texas A&M School of Law, Fort Worth, TX - March 2018)

Good News for People Who Love Bad News: The Consequences of Private Deal-making for Musicians

- Emerging Dilemmas in Entertainment Law: Resolving Technology’s Ethical Concerns (Whittier Law School, Costa Mesa, CA - November 2016)

Substantial Similarity as Fair Use in Music

- Fair Use in the Digital Age Conference (University of Washington Law School, Seattle, WA - April 2015)

Industry Panels, Commentary, and Conference Moderation

- “Content in a Multiplatform World and Related Legal Issues,” Moderator and Faculty, 17th Annual Rocky Mountain Intellectual Property & Technology Institute: IP on the Silver Screen – Lights, Cameras, Action!, May 30-31, 2019, Westminster, Colorado.
- “Section 512 Safe Harbor: Challenges and Opportunities in User-Generated Content,” Host & Moderator, March 8, 2018, University of Colorado Law School, Boulder, Colorado.
- “Policy and Predictions in an Era of Rapid Technological Change,” Moderator, Regulating Computing and Code Conference, February 12, 2018, University of Colorado Law School, Boulder, Colorado.
- “Blurred v. Bright: The Changing Analysis of Copyright Infringement in Music,” Host & Moderator, March 23, 2017, Silicon Flatirons Center for Law, Technology and Entrepreneurship at the University of Colorado, Boulder, Colorado.
- “Innovation and Incentives in the Creative Arts,” Host & Moderator, March 3, 2016, Silicon Flatirons Center for Law, Technology and Entrepreneurship at the University of Colorado, University of Colorado, Boulder, Colorado.
- “Innovation in the Creation and Distribution of Content,” Host & Moderator, Silicon Flatirons Center for Law, Technology and Entrepreneurship at the University of Colorado, March 5, 2015, Boulder, Colorado.
- “Intellectual Property Strategy and the Long Tail: Evidence from the Recorded Music Industry,” Discussant, Fourth Annual Research Roundtable on the Law and Economics of Digital Markets, Searle Center on Law, Regulation, and Economic Growth, Northwestern University Law, October 9-10, 2014, Chicago, Illinois.
- “Technological Change, Ethics, and the Law,” Panelist, Gathering of the Bench and Bar Conference, October 3, 2014, Boulder, Colorado.
- “The Future of Copyright Competition Policy,” Colorado Bar Association IP Section, September 29, 2014, Denver, Colorado.
- “Beg, Borrow or Steal: Art and Copyright Law,” Presenter, South by Southwest Music Conference, March 14, 2014, Austin, Texas.
- “Compulsory Licenses and Online Music,” Presenter, South by Southwest Music Conference, March 13, 2014, Austin, Texas.
- “Private Rights Creation & Default Penalty Licenses,” Presenter, 7th World Intellectual Property Organization (WIPO) Advanced Research Forum on Intellectual Property Rights, May 28-30, 2013, WIPO, Geneva, Switzerland.
- “The Artist’s Copyright Conundrum,” Presenter, South by Southwest Music Conference, March 14, 2013, Austin, Texas.
- “Yours, Mine and Ours: Ownership of Cultural Capital,” Panelist, Entertainment and the Law Conference, October 19-21, 2012, Yale Law School, New Haven, Connecticut.
- “Copyright,” Moderator, TPRC Annual Research Conference on Communication, Information and Internet Policy, September 21-23, 2012, George Mason University School of Law, Arlington, Virginia.
- “Movies and Music Go Social,” Panelist, Digital LA, September 19, 2011, Santa Monica, California.

- “It’s All About the Music: An Examination of the D.I.Y. Approach to a Music Career,” Panelist, Yale in Hollywood Summit: What Inspires You?, March 5, 2011, New York, New York.
- “Artists Go Social,” Panelist, Digital LA, April 12, 2010, Los Angeles, California.
- “Music Now! Innovations & Business Models,” Panelist, Yale in Hollywood Summit: Leading Through Innovation, March 12, 2010, Universal City, California.

TEACHING EXPERIENCE

Seminar: The Law & Economics of Copyright, University of Colorado Law School, Spring 2018

Copyright Law, University of Colorado Law School, Spring 2016, Spring 2017, Fall 2017, Fall 2018, Spring 2020

Property Law, University of Colorado Law School, Spring 2015, Spring 2016, Spring 2017, Spring 2018

Trademark & Unfair Competition Law, The George Washington University Law School, Spring 2014; University of Colorado Law School, Fall 2014, Fall 2015, Spring 2020

Artistic Freedom & Control in Copyright, The George Washington University Law School, Summer 2013, Summer 2014

Seminar: Opportunities & Challenges in Digital Copyright, The George Washington University Law School, Spring 2013

SERVICE

To the Law School

Faculty Colloquium Committee, Fall 2019 & Spring 2020

IP, Technology & Telecommunications LLM Faculty Advisor, Fall 2018-present

Appointments Committee, Fall 2018-Spring 2019

Admissions Committee, Fall 2017-Spring 2018

Peer Evaluator for Promotion & Tenure Committee, Fall 2017

Faculty Advisor, Latino Law Students Association (LLSA), Fall 2017-present

Appointments Committee, Fall 2016-Spring 2017

Faculty Sponsor for Sports & Entertainment Law Student Group (SELSA), Fall 2016-Spring 2017

Dean Search Committee, Fall 2015-Spring 2016

Faculty Advisor Program, Fall 2015-Spring 2016

Faculty Sponsor for Silicon Flatirons Student Group (SFSG), Fall 2014-present

Technology Committee, Fall 2014-Spring 2015

Faculty Sponsor for Student Animal Legal Defense Fund (SALDF), Fall 2014-Spring 2015

To the University

Silicon Flatirons Executive Director Search, Spring-Summer 2019

ATLAS Faculty Advisory Board, Fall 2017-present

Director of the Content Initiative, Silicon Flatirons Center for Law, Technology, and Entrepreneurship, Fall 2014-present

To the Profession

Member, Society for Empirical Legal Studies, Spring 2019-present

Member, Society for Empirical Research on Copyright Issues (SERCI), Fall 2018-present

Member, Copyright Society of the United States, Rocky Mountain Division, Fall 2018-present

Member, American Law and Economics Association, Fall 2016-present

Mentor, Techstars Music, Fall 2016-present

BAR MEMBERSHIP

California (admitted 2006)

New York (admitted 2003)

OTHER EMPLOYMENT

UNIVERSAL MUSIC GROUP, Santa Monica, California 2009-2012
Director. Developed and analyzed global digital content strategy for all distributed record label properties. Negotiated, advised and approved the licensing of digital audio, video and mobile content across promotional and commercial platforms, domestic and international.

MYSPACE MUSIC, LLC, Beverly Hills, California 2008-2009
Director. Identified, initiated and negotiated content licensing agreements for use and monetization of digital music content across multiple platforms and campaign formats, online and mobile, streaming and download. Utilized and promoted digital content in accordance with the terms of joint venture and content licensing agreements.

QUINN EMANUEL URQUHART & SULLIVAN, LLP, Los Angeles, California 2006-2008
Associate. Advised music and film clients re licensing and publishing compliance. Researched, drafted, and argued briefs, motions, pleadings and legal memoranda on questions of contract interpretation, intellectual property rights, content licensing, copyright and trademark law.

WACHTELL, LIPTON, ROSEN & KATZ, New York, New York Summer 2002, 2003 - 2006
Associate. Negotiated and drafted asset purchase, partnership, shareholder, employee benefit, confidentiality and other ancillary agreements for multi-million dollar mergers and acquisitions. Researched and drafted briefs on questions of contract interpretation, corporate law, and securities law.

UNITED STATES ATTORNEYS' OFFICE, SOUTHERN DIST. OF TEXAS, Houston Summer 2001
Civil Clerk.

SELECTED PRESENTATIONS, MEDIA, AND EXPERT CONSULTATION

Quoted in Anandashankar Mazumdar, "Copyright Verdict Against Robin Thicke Hit 'Blurred Lines' Stands," BLOOMBERG BNA PATENT, TRADEMARK & COPYRIGHT LAW DAILY (Mar. 21, 2018).

Featured in Kaley Laquea, "CU Law School Offers New Legal Specialties," LAW WEEK COLORADO, Aug. 11, 2017.

Featured in "YouTube Draws Musicians' Ire with Low Royalty Fees," BLOOMBERG LAW RADIO (July 19, 2017).

Quoted in Anandashankar Mazumdar, "Duran Duran Can't Yank Back U.S. Rights in 80s Hits," BLOOMBERG BNA PATENT, TRADEMARK & COPYRIGHT LAW DAILY (Dec. 2, 2016).

Quoted in Anandashankar Mazumdar, "Streaming's Future Might Be in Negotiated Rates," BLOOMBERG BNA PATENT, TRADEMARK & COPYRIGHT LAW DAILY (Dec. 21, 2015).

Quoted in Alicia Wallace, "Denver's Out Front in 'David and Goliath' Battle with Billboard Company," THE DENVER POST (Dec. 8, 2015).

Quoted in Blake Brittain, "'Dancing Baby' Ruling Leaves Copyright Concerns in Its Wake," BLOOMBERG BNA ELECTRONIC COMMERCE & LAW REPORT (Nov. 4, 2015).

Quoted in Blake Brittain, "Musicians More Careful After 'Blurred Lines' Case," BLOOMBERG BNA PATENT, TRADEMARK & COPYRIGHT LAW DAILY (Sept. 17, 2015).

Featured in This Week in Law 311: Risky Business (July 17, 2015).

Quoted in Jason Blevins, "Telluride Foundation says Brazil stole its logo for Olympics," DENVER POST (July 16, 2015).

Quoted in Anandashankar Mazumdar, "Music Licensing Reform Faces Much Controversy, Requires More Thought," BLOOMBERG BNA PATENT, TRADEMARK & COPYRIGHT LAW DAILY (Feb. 13, 2015).

Featured in Episode 219: "Future of Copyright in the US, Grammys, Deezer Elite, Rhapsody, Apple As a Label?," DIGITAL MUSIC TRENDS (Feb. 12, 2015).

Quoted in Felicia Fonseca, "Company seeks rights to names of iconic Grand Canyon lodges," Associated Press (Jan. 26, 2015).

Cited in EUROPEAN PERSPECTIVES ON BEHAVIOURAL LAW AND ECONOMICS, Klaud Mathis, ed. (Springer 2015).

Featured in Episode 201: “iHeartMedia, U2 Snowballs, Samples & Copyright, Deezer Elite, Alt-J, Facebook & Videos,” DIGITAL MUSIC TRENDS (September 17, 2014).

Expert Testimony in *Estevan Oriol v. H & M Hennes & Moritz, LLP*, 13-CV-05088 (C.D. Cal)(September 25, 2013)(testifying to copyright and trademark infringement issues in iconic photography dispute).

Quoted in Greg Sandoval, “Pandora wins court fight aimed at blocking music from internet radio services,” *The Verge* (Sept. 18, 2013).

Guest Contributor, “How Private Copyright Deals Are Cutting Artists Out...,” DIGITAL MUSIC NEWS (September 18, 2013).

Featured in “Termination Rights,” FUSE NEWS (September 11, 2013).

Featured in “Disruptive Contracting in Digital Music,” a review of *Private Copyright Reform* by Rebecca Tushnet, JOTWELL (September 10, 2013).

Featured in Episode 142: “Piracy ads cut, six warnings, Gig-it launch, Pandora’s bill, Aimee Mann’s suit,” DIGITAL MUSIC TRENDS (July 26, 2013).

Featured in SXSW 2013 Edition: “Artist Termination Rights,” DIGITAL MUSIC TRENDS (March 13, 2013).