2015 Intellectual Property Scholars Roundtable
Drake University Law School

FINAL PROGRAM

FRIDAY, MARCH 27, 2015

8:45  Breakfast

9:15  Welcoming Remarks

Prof. Peter K. Yu, Kern Family Chair in Intellectual Property Law & Director, Intellectual Property Law Center, Drake University Law School

9:30  Panel 1: Patent Law I

Presenters: Prof. Bryan H. Choi, New York Law School

Prof. Thomas C. Folsom, Regent University School of Law
“Patenting a PB&J Sandwich, Is This a Problem?”

Prof. Lucas Osborn, Campbell University School of Law
“A New Patent System for a New Age of Innovation” (with Dr. Joshua M. Pearce, Professor of Electrical and Computer Engineering, Michigan Technical University)

11:00  Coffee Break

11:30  Panel 2: Patent Law II

Presenters: Prof. Emily Michiko Morris, Robert H. McKinney School of Law, Indiana University
“Reverse Payment Settlement Paradigms”

Prof. Jason Rantanen, University of Iowa College of Law
“Teva, Nautilus, and Change Without Change”

Prof. Shine Tu, West Virginia University College of Law

1:00  Lunch
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SUNDAY, MARCH 28, 2015

9:00  Breakfast

9:30  Panel 5: Intellectual Property Law

   Presenters:  Patrick Goold, IP Fellow, Chicago-Kent College of Law
               “Intellectual Property Law and the Bundle of Torts”

               Prof. J. Janewa OseiTutu, Florida International University College of Law
               “Intellectual Property Rights as ‘Human’ and ‘Natural’ Rights?”

               Prof. Lucille M. Ponte, Florida Coastal School of Law
               “Protecting Brand Image or Gaming the System? Consumer ‘Gag’ Contracts in an Age of
               Crowdsourced Ratings and Reviews”

11:00  Coffee Break

11:30  Panel 6: Patent Law III

   Presenters:  Prof. Sarah Burstein, University of Oklahoma College of Law
               “The High Cost of Cheap Design Protection”

               Prof. W. Keith Robinson, Dedman School of Law, Southern Methodist University
               “Attorney Fees After Octane Fitness and Highmark”

               Prof. Ing Sigram Schindler, Technical University of Berlin (Germany)
               “The Supreme Court’s Guidance to Robust Patents on Emerging Technology Claimed
               Inventions”

1:00  Lunch

6:30  Dinner for Roundtable Participants

   The Des Moines Embassy Club
   666 Grand Avenue
COMMENTATORS

- Aylin Akturk, J.S.D. Candidate, Boalt Hall School of Law, University of California at Berkeley
- Prof. Michael Landau, Georgia State University College of Law
- Prof. Lateef Mtima, Howard University School of Law
ABSTRACTS

Dr. Henry Biggs, Washington University School of Law
“One Step Forward or Two Steps Back? TRIPs and the Local Working Requirement”

The TRIPs Agreement is uniquely illustrative of the intellectual property tensions between developed and developing countries. A fundamental example of this tension can be seen in interpretations of TRIPs language in referencing the local working requirement articulated in Article 5A of the Paris Convention. Many have argued that the language of TRIPs essentially renders this requirement toothless; others have countered TRIPs effects no such evisceration. This presentation will address arguments from both perspectives, finding ultimately that TRIPs does permit some flexibility for a local working requirement.

Prof. Sarah Burstein, University of Oklahoma College of Law
“The High Cost of Cheap Design Protection”

The U.S. design patent system has been repeatedly criticized for being “too expensive.” Critics argue that the United States should adopt a system in which design protection is cheap or free to obtain, like the European Community Design regime. Even the U.S. Patent and Trademark Office appears to assume that design patents should be as cheap as possible, cheering the United States’s progress towards joining the Hague System for the International Registration of Industrial Designs. This paper questions the commonly-accepted proposition that design rights should be as inexpensive as possible, arguing that “cheap” design rights impose significant costs on competitors, judicial systems, and society as a whole. Many of these costs spring from the fact that someone must pay to search the prior art and determine if a claimed design right is valid. In the United States design patent regime, the requirement of PTO examination effectively forces the claimant to bear those search costs as a prerequisite to protection. In “cheap” systems, like Europe, those costs are externalized to competitors and, ultimately, to society. And the cheaper the rights are, the more expenses they impose. Viewed in this manner, forcing claimants to bear the initial search costs is neither unfair nor inefficient. At a minimum, the costs of cheap protection should be recognized and discussed in evaluating the merits of particular design-protection regimes.

Prof. Bryan H. Choi, New York Law School

The patentable subject matter doctrine is a cornerstone of patent law, allowing courts to disqualify patents as per se ineligible for protection. After decades of dormancy, the doctrine has been abruptly revived by the Supreme Court. Caught off guard, many in the patent community have criticized the judicial doctrine as dangerously unprincipled and have sought to confine it to the more familiar contours of the Patent Act. Indeed, “patentable subject matter” is commonly referred to as a § 101 issue, as though it were principally a matter of statutory construction.

Yet, the proper understanding of the doctrine is that it constitutes independent exercise of judicial power separate from the Patent Act. It is a constitutional doctrine—not a statutory one—that checks legislative and executive power from exceeding the authorization of the Progress Clause. As such, it is not a threshold “gatekeeper” inquiry, but rather a parallel inquiry that owes no fealty or deference to the Patent Act.

The underlying quarrel is not that the patentable subject matter doctrine leads to bad outcomes, but the fact that it disrupts settled assumptions regarding the supremacy of the Patent Act. Those who have come to rely on the Patent Act as the first and final arbiter of patent policy have good reason to find the patentable subject matter doctrine unsettling. It restores an uninvited variable to the system: independent judicial authority to police patent policy, not just rubberstamp it.
Prof. Tonya M. Evans, Widener University School of Law
“Copyright Reclamation in the Age of Celebrity Loan-Out Corporations and Nonprobate Copyright Transfers”

In this article, I explore the interplay and the disconnect between intellectual property and property transfer at death; specifically, the impact of an heir’s copyright transfer termination right on the original copyright owner’s freedom of testation and intent to the extent her probable or actual intent is contrary to the “statutory will” disposition in the case of intestacy or the decedent’s express wishes in her will. Although transfers made by will are not subject to a termination right, no such exception is made for a copyright owner’s lifetime transfer.

The practical effect is that an heir, who inherits the right to terminate a lifetime copyright transfer, may exercise that right and successfully reclaim copyright ownership against the decedent’s actions and intent to transfer at her death copyright ownership via a nonprobate device to someone or some entity other than the heir. Examples of those lifetime transfers include transfers into an actor’s or performing artist’s loan-out company, a painter’s lifetime charitable gift of a painting to a museum or a songwriter’s lifetime transfer of song and recording copyrights into his revocable trust.

Many scholars, practitioners and copyright transferees in the entertainment business surmised and theorized the likely impact of the first reclamation trigger date of January 1, 2013 on transfer terminations within the entertainment industry. Some also expressed concern with the apparent distinction between, and treatment of, transfers by will and nonprobate transfers. This article focuses on what has actually transpired since that trigger date and what might be done going forward to reconcile the probate and nonprobate disposition of copyrights in a way that best honors a testator’s intent given what we now know in fact.

In Part I, I explore the history and role of the copyright transfer termination right and embark on a substantive discussion about the legislative history of this right to highlight why Congress added the transfer termination right and why transfers made by will are not subject to a termination right. Part I also compares and contrasts briefly the pre-1978 and post-1977 termination rights.

In Part II, I explore the history and importance of testamentary freedom and the trend led by the drafters of the Uniform Probate Code to interpret wills statutes expansively both to glean and to honor testamentary intent in the law of succession.

In Part III, I examine the historical development and emergence of will substitutes in succession law. First, I identify and discuss common types of will substitutes. Next, I focus more specifically on the types of nonprobate transfer vehicles typically involved in the entertainment industry that an individual might use: 1) to hold copyrights and other intellectual property during their lifetimes; and 2) to transfer those same IP assets at the death of the individual. These types include inter vivos trusts and celebrity loan-out companies.

In Part IV, I analyze succession cases involving copyright reclamation where heirs, who stood to reclaim under probate laws, challenged a copyright transfer by the decedent into a nonprobate vehicle designed to pass the copyright to someone or some entity other than those heirs.

Finally, in Part V I offer legislative fixes for both the Copyright Act and Uniform Probate Code to reconcile the probate and nonprobate disposition of copyrights to best honor a testator’s intent.
Imagine for purposes of discussion that the technology for designing and building an actual cornucopia—something that embodies coded genetically modified organisms, or other coded techniques for producing, modifying, creating, or duplicating food (call it neo-tech food design)—exists, works, and is safe. To frame the problems of neo-tech food design, I start with what ought to be an easy case of low-tech food design, the peanut butter and jelly sandwich. Since it is a prime example of an incremental improvement invention, and hence like very many other inventions that are routinely patented, it must be asked: was there a problem? And if so, what exactly was the problem, with the issuance, or cancelation, of a patent on a sandwich having a doubly encapsulated, doubly sealed jelly filling, with spaced apart seals, one of which sealed capsules is peanut butter?

Based on lessons learned from the once-patented sandwich, I present two proposals, in the alternative. First, and as what may seem an unlikely solution, I endorse the creation of a Public Domain Protection Agency (PDPA) with resources to help resolve the problems that will predictably arise out of a cornucopia. The PDPA might also serve as a counterweight to the tendency, exemplified by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to lock-in some of the current developed nations’ standards for patentability, worldwide. Second, I present an alternate proposal that may be more attainable: virtual field of use limitations coupled with virtual ratemaking proceedings.

**Patrick Goold, IP Fellow, Chicago-Kent College of Law**

“Intellectual Property Law and the Bundle of Torts”

Lawmakers and scholars frequently refer to “the tort of copyright infringement” and “the tort of patent infringement.” Underlying these statements is the belief that copyright infringement and patent infringement are both torts. Using analytic tort theory, this article demonstrates that such a view is incorrect. Patent infringement is not a tort and neither is copyright infringement. Instead, patent infringement, like copyright infringement, is composed of a complex bundle of torts. For example, reproducing a work is a different copyright tort to distributing a work, just as trespass is a different real property tort to private nuisance. Likewise, making a patented invention and selling a patented invention are two distinct patent torts, just as defamation and invasion of privacy are two distinct dignitary torts.

Failing to appreciate the bundle of copyright and patent torts has resulted in an important oversight from scholars and policy makers. Tort law typically constructs different liability regimes for different torts. For example, liability for trespass to land requires neither proof of fault nor harm, while private nuisance requires proof of fault, but no proof of harm, and negligent property damage requires proof of both fault and harm. By contrast, the lack of conceptual differentiation between the different IP torts has resulted in the adoption of uniform liability regimes (strict liability) across whole ranges of different torts, regardless of whether doing so is normatively desirable.

By producing a fine-grained, analytic theory of IP, this article shows that patent and copyright law both contain multiple torts, each of which requires an individually tailored liability regime. Using economic theory, the article provides the first attempt to construct socially optimal liability regimes across intellectual property’s bundle of torts.
**Prof. Emily Michiko Morris, Robert H. McKinney School of Law, Indiana University**

“Reverse Payment Settlement Paradigms”

In its recent ruling in *FTC v. Actavis*, the U.S. Supreme Court decided that antitrust suits involving so-called reverse payment settlements should be examined under the rule of reason. Brand-name pharmaceutical patentees often pay generic manufacturers to settle Paragraph IV challenges to pharmaceutical patents under the Hatch-Waxman Act. Critics view these settlements as inherently suspect because they reverse the typical flow of payment in patent infringement suits, a characteristic these critics view as effectively paying would-be generic competitors to stay out of the market.

In regarding reverse payment settlements as potentially anticompetitive, however, the Supreme Court clearly adhered to the common view of patents as “embarrassments”—that is, exceptions—to what would otherwise be a properly competitive environment. To view patents (or intellectual property) as anticompetitive embarrassments, however, one must believe that, outside of patent protection, competitors necessarily should be permitted to use each other’s inventive concepts.

The law has no such view of tangible goods, however: no similar presumption of a competitive right to use another’s property applies. Patents (and other intellectual property) presumably differ from tangible goods because the *res* of these property-like rights are nonrivalrous and nonexcludable by nature. Under a naturalistic fallacy type of reasoning, then, patentable inventive concepts and other intellectual property *should not* be excludable in an ideally competitive market the same way tangible property rights are because intellectual property cannot be consumed.

Intellectual property rights can be viewed within a different paradigm, however: patents and other IPRs are not *embarrassments to competition* but in *fact protections against unfair competition*. In particular, the IPRs may serve as protections, albeit roughly hewn protections, against free-riding on investments in creating intellectual property. Unlike the resulting intellectual property itself, *investments in creating* intellectual property are fully rivalrous inputs. Other inputs necessary to commercialize intellectual properties once they have been created are also fully rivalrous. The more that a competitor seeks to free-ride on these investments in intellectual property, the more this free-riding looks like unfair competition.

Focus on a competitor’s efforts to use another’s rivalrous inputs rather than on a competitor’s attempts to use another’s non-rivalrous outputs thus shifts the IPR infringement paradigm. The latter paradigm recognizes that the boundaries of an IPR are at best merely an approximation of the inputs invested in the IPR and that there are other, more effective ways to protect the incentive effect of IPRs. This article examines evidence supporting this unfair-competition paradigm for IPR infringement and then suggests how this paradigm can be applied to the putative anticompetitive implications of reverse-payment settlements under the Hatch-Waxman Act.

**Prof. Chidi Oguamanam, Faculty of Law, University of Ottawa (Canada)**

“Africa’s Romance with Plant Breeders’ Rights”

In 2000, under the auspices of the then Organization of African Unity (OAU), African countries expressed reservation over the adoption of the UPOV Act of 1991 as a model of Plant Breeders Right (PBRs) for the continent. The OAU, which has since become the African Union (AU) then argued that an acceptable system of PBRs protection would be one that accommodates the “rights of communities and their indigenous knowledge as well as rights of farmers …” Apparently, the AU did not think that the UPOV Act of 1991 met those expectations. Fast-forward to 2105, most African countries on regional and national bases appear to have jettisoned their earlier resolve, and have since embraced the UPOV Act of 1991. The continent’s about-face is happening notwithstanding that TRIPS does not require African countries to be UPOV’91-compliant; notwithstanding that smallholder indigenous and local communities
farmers account for over eighty percent of the continent’s food production; notwithstanding that there is paucity of continental capacity on formal plant breeding. What happened? How did the continent make this dramatic volte-face on PBRs? We explore the nuances and the nature of the legal muddle being created in the wake of Africa’s multipronged approaches to PBRs.

**Prof. Lucas Osborn, Campbell University School of Law**
“A New Patent System for a New Age of Innovation” (with Dr. Joshua M. Pearce, Professor of Electrical and Computer Engineering, Michigan Technical University)

This Article first demonstrates how new and emerging technologies are radically altering the relative costs and benefits of the patent system by significantly reducing the research, development, and commercialization costs (collectively, “innovation costs”) that are used to justify the patent system’s existence. These technologies include the obvious (the internet), the newly established (cloud computing), and the emerging (3D printing and molecular engineering).

As innovation costs decrease, the neoclassical economic justification for the patent system comes under stress and begins to interact significantly with social science research outlining non-monetary incentives for innovation. This article explores what changes should come to the patent system assuming the average cost of innovation has fallen significantly (e.g., at least by half and perhaps much more). All things being equal, if average innovation costs decrease significantly, the relative need for the patent system will decrease from an economic-incentive viewpoint. As the need to recoup R&D expenses decreases, the importance of non-monetary incentives becomes proportionally greater. This article explores these interactions and makes recommendations for how to change our patent laws—albeit gradually—to account for technologies that lower the costs and risks of innovation.

**Prof. J. Janewa OseiTutu, Florida International University College of Law**
“Intellectual Property Rights as ‘Human’ and ‘Natural’ Rights?”

From a theoretical perspective, does it matter if we view the right to patent, copyright or trademark protection as a human right? What are the implications for promoting progress? Both natural rights intellectual property advocates and modern human rights law draw on John Locke’s natural rights theories for theoretical support. Yet, some proponents of a natural rights approach to intellectual property argue for more expansive intellectual property protections while proponents of a human rights approach to intellectual property contend that human rights can have a moderating influence on intellectual property law. This paper explores this apparent conflict.

**Prof. Lucille M. Ponte, Florida Coastal School of Law**
“Protecting Brand Image or Gaming the System? Consumer ‘Gag’ Contracts in an Age of Crowdsourced Ratings and Reviews”

Traditionally, businesses developed and controlled brand image through company-sponsored advertising and marketing campaigns. With the rise of social media, brand communications have become more interactive, especially on crowdsourced review sites. This increased interactivity helps companies to gain valuable insight into the consumer experience and to improve their brand image and customer engagement. Businesses soon learned that positive consumer ratings and reviews often translated into enhanced brand reputation and increased revenues. Some merchants and professionals seek to burnish their brand image by paying for positive reviews while others try to silence disgruntled customers through adhesive nondisparagement clauses. These gag clauses may rely upon dubious intellectual property claims, monetary penalty clauses, and other financial threats in order to prevent unhappy consumers from posting negative reviews. Certain businesses justify these provisions as legitimate actions needed to protect their brand image and goodwill in a social media environment fraught with fake negative reviews.
from unscrupulous competitors and libelous consumers. This presentation will examine the rise of consumer nondisparagement clauses and consider the legality of such agreements under contract, free speech, and intellectual property principles. Issues of freedom of contract and concerns about deceptive advertising, fair use, and copyright misuse will also be addressed. This presentation will conclude with a review of proposals that balance freedom of contract and legitimate branding concerns with customer speech interests and issues of good faith and fair dealing.

Prof. Jason Rantanen, University of Iowa College of Law
“Teva, Nautilus, and Change Without Change”

Over the past several years, the Supreme Court has been remarkably active in patent law. Out of all those decisions, which touched almost every aspect of patent law, the ones with the greatest potential to shake the foundations of patent law were the Court’s opinions addressing claim meaning. Claims are, after all, “the bedrock of patent law,” and “the name of the game is the claims.” Almost everything in patent law flows from the claims. Thus, when the Supreme Court granted certiorari in Nautilus v. Biosig, and then three months later in Teva v. Sandoz, the expectation was that great change was afoot.

On the surface, the Court’s opinions bore out that expectation. In both Nautilus and Teva, the Supreme Court expressly rejected the Federal Circuit’s approach and replaced it with its own. But in the months since, the doctrines the Court addressed in Nautilus and Teva have changed very little. It seems to be business as usual at the Federal Circuit. The Federal Circuit continues to routinely reject indefiniteness challenges and grant no formal deference to district courts in reversing their claim constructions. Meanwhile, its formal doctrinal analyses look virtually identical to those before the Supreme Court intervened.

This change-without-change raises three important questions: first, how has the Federal Circuit been able to pull it off from a formal, legal perspective? In other words, how is it that the Federal Circuit, seemingly constrained by the express instructions of the Supreme Court, nonetheless managed to avoid any meaningful change to the doctrines of claim meaning? Second, why is the Federal Circuit so resistant to changes to its approach to claim construction even as it has made substantial movement in response to other decisions by the Court? Third, what does the future hold, particularly for claim construction, as the district courts rely on Teva and adapt their claim construction opinions to expressly rely on factual findings?

This Essay attempts to answer these questions.

Prof. W. Keith Robinson, Dedman School of Law, Southern Methodist University
“Attorney Fees After Octane Fitness and Highmark”

A court may award attorney fees to a prevailing party in a patent case under exceptional circumstances. Beginning in 2005, courts applied a rigid formula to determine whether a case was exceptional. In the summer of 2014, the Supreme Court rejected this rigid test. Instead, the Court held that an exceptional case is “simply one that stands out from others.” Finding a case exceptional, the Court said, was at the discretion of the district court and only reviewable on appeal for an abuse of discretion.

In the absence of a more formulaic approach, how do district courts now determine what cases are exceptional? This article analyzes recent decisions issued after the Supreme Court’s 2014 rulings regarding attorney fees. This article observes that courts primarily analyze a party’s (1) litigation position and (2) litigation conduct to determine whether—in its discretion—to award attorney fees. To a lesser degree, courts also have awarded attorney fees to deter infringement and unsavory litigation practices. An
understanding of these early cases is important because the circumstances that courts find “exceptional” may establish a common pattern.

Prof. Ing Sigram Schindler, Technical University of Berlin (Germany)
“The Supreme Court’s Guidance to Robust Patents on Emerging Technology Claimed Inventions”

The Supreme Court’s groundbreaking KSR / Bilski / Mayo / Myriad / Biosig / Alice decisions introduced into substantive patent law (SPL) precedents fundamental notions indispensable for therein establishing, also for Emerging Technology Claimed Inventions (ET CIs), consistency and predictability. It thus induced creating the Facts Screening / Transforming / Presenting (FSTP) project for developing “patent technology”, which achieves for ET CIs an “SPL transparency” hitherto impossible, as it vastly reduces their known obviousness / non-patent-eligibility / indefiniteness obscurities, thus greatly facilitating ET CIs tests for their satisfying SPL. Especially its FSTP test is indispensable for developing ET CIs and drafting their specifications such that they are protected by absolutely robust patents, which enables designing an “innovation expert system” of initially unexpected capabilities.

For facilitating an understanding of this dramatic progress in SPL precedents for ET CIs—hence of developing and drafting legally invulnerable patents on ET CIs—in-depth tutorials open an access to this innovative thinking about SPL precedents, based on its scientification. This paper supports these tutorials by explaining—by the 2 key Supreme Court decisions (Alice and Biosig), six topical CAFC decisions / hearings dealing with ET CIs (Interval, Biosig, DDR, Ultramer-cial, Myriad and the author’s ’902 / ’453 case), and the new PTO guideline—that why any one of their 6+ patents would (probably) have survived unquestioned—at the CAFC and/or PTO—if its ET CI would have undergone the FSTP test, potentially improved appropriately, and its outcome been disclosed by its specification, whereby the six CAFC panels dealing with them, if proceeding in their 6+ specific ET CIs tests as required by these two Supreme Court decisions, indeed have (at least partially) overcome the CAFC’s former SPL difficulties as to ET CIs—by the FSTP test today unquestionably identifiable / specifiable—and moreover clearly proven that these Supreme Court decisions provide practically excellent guidance.

Prof. Lars S. Smith, Louis D. Brandeis School of Law, University of Louisville
“Bitcoins in Secured Transactions: There Is No Spoon”

This paper looks at how collateral consisting of Bitcoins will be treated under UCC Article 9. A major focus of the paper is how the technology behind Bitcoin may cause unintended results in the application of security interests in Bitcoins.

Prof. Shine Tu, West Virginia University College of Law

In a previous study, we suggest that there are two different populations of examiners: (1) those examiners who may “rubber stamp” patents by allowing patents with little to no review and/or amendments to the claims, and (2) those examiners who may be rejecting many “good” applications that meet the patentability standards. I hypothesize that junior examiners who are more carefully scrutinized and also do not have a large number of allowed cases, may be more wary of allowing an application. Accordingly, junior examiner have a lower allowance rate. In contrast, senior examiners who are less scrutinized and have higher production quotas, may maximize their counts by allowing cases at a higher rate.

I propose to examine four independent types of examiners and review a sample of patents from each group. The four groups of examiners are: (1) those examiners who allow patents at a high rate (more than 100 patents per year), (2) those examiners who allow patents at an average rate (this rate will depend on which art unit the examiner comes from), (3) those examiners who allow patents at a low rate (less than 5
patents per year) and (4) those examiner who allow patents that are later found invalid. We will sample approximately 100 patents from each examiner type from a variety of art units (most likely 10-20 different art units). We will then review the prosecution history for each patent to determine if the examiner is using certain methods to increase his/her counts.

**Prof. V.K. Unni, Indian Institute of Management Calcutta (India)**

“Pharma Patent Settlements and Competition Regulations: Perspectives from India”

The last few decades have witnessed some extremely passionate discussions on the need to find a common ground where the interests of pharmaceutical companies and general public who often consume these pharmaceutical products can be safeguarded. These discussions on numerous occasions have been clouded by various patent infringement suits, challenges on patent grants by public health groups, pre grant opposition of patent applications, allegations of coercive and unfair licensing practices etc. India has contributed a fair share to all the above said controversies and many of the cases being fought in Indian courts have attracted significant global attention.

However one practice which has come up very recently involving patent settlement can seriously threaten public interest in the sphere of health. Indian law dealing with anti-competitive practices involving inventions protected by patent law or any other intellectual property law is still in its infancy. The focus of this presentation will be to examine the specific instances where patent owners have settled with the generic companies and how this will adversely impact the public interest.

**Prof. Peter K. Yu, Drake University Law School**

“Towards the Seamless Global Distribution of Cloud Content”

In the age of cloud computing, consumers expect content to be accessible anywhere, anytime (think about *Game of Thrones* and *Downton Abbey*). Yet, because of the considerable challenges cloud platforms pose to copyright protection, rights holders may be eager to push for the introduction of geographical restrictions into these platforms. What are the justifications for and drawbacks of these restrictions? Given the immense and ever-growing potential of cloud computing, should adjustments be made to the copyright system to promote global distribution of cloud content? And if so, what are the possible adjustments?