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LST FACULTY

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- Paul Goldstein**
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- Henry T. Greely**
 Professor of Law, Stanford Law School, and Professor of Genetics (by courtesy), Stanford School of Medicine
- Lawrence Lessig**
 Professor of Law, and Director, Center for Internet and Society, Stanford Law School
- Margaret Jane Radin**
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From the Director of the Program in Law, Science & Technology

Welcome to our first issue of **LST@Stanford**, the newsletter of the Law, Science & Technology (LST) program at Stanford Law School.

As you may already know, the LST program’s mission is to serve law students, lawyers, academics, policy makers, and business people alike by providing a forum in which to exchange ideas about the many new questions that arise at the intersection of law and technology. The spectrum of these issues is broadening as rapidly as the development and spread of ever more sophisticated technologies. The LST program provides a fulcrum for cultivating the knowledge and expertise needed to deal with the wide range of issues that confront us in a technology dependent environment.

Thanks to the support of our Dean, Kathleen M. Sullivan, as well as the work of devoted students, faculty, alumni, and friends of the Law School, the LST program has evolved into the premier place for intellectual exchange about technology-related legal issues both in the U.S. and globally.

The program houses three centers that actively contribute to



the domestic and international discourse about law and technology. Under the exciting leadership of Professor Lawrence Lessig, the Center for Internet and Society (CIS) has done groundbreaking work, speaking to the issues surrounding civil rights, technological innovation, and intellectual property.

The Center for E-Commerce, which is fortunate to have Ian Ballon (a partner specializing in IP law at Manatt, Phelps & Phillips LLP) as its Executive Director, has spearheaded exploration of the critical gray areas of the law pertaining to online business activity, and is playing a central role in the enhancement of industry practices.

The Center for Law and the Biosciences will officially launch in February 2004, with a conference exploring the ethical and legal questions surrounding pre-implantation genetic diagnosis.

With Professor Henry T. Greely’s vision and leadership, the Center for Law and the Biosciences will establish itself as an essential presence in the ongoing intellectual exchange in this cutting-edge field. In addition, the LST program welcomes every year a unique group of experienced high-tech lawyers from around the globe who come to Stanford to earn an advanced law degree (LLM) as students of the LLM Program in Law, Science & Technology.

LST@Stanford will provide you with a regular update on the current and future activities of the Stanford Program in Law, Science & Technology and its centers. In addition, the newsletter will cover technology-related developments from across Stanford University and around the world.

Please send ideas and suggestions regarding topics that you think should be covered in future issues of **LST@Stanford** to Roland Vogl, Executive Director of the Program in Law, Science & Technology and Editor-in-Chief of **LST@Stanford** (rvogl@law.stanford.edu).

-- Margaret Jane Radin

Incoming LLM Students Look to Build Upon First-Year Successes of Program

In the 2002-03 academic year, the Master of Laws (LLM) program in Law, Science & Technology proved itself a great new addition to Stanford Law School. Students in this program come to Stanford to undergo a year of rigorous academic and professional training in legal practice and interdisciplinary analysis related to current developments in law, science and technology, including such areas as e-commerce, jurisdiction and dispute resolution in cyberspace, biotechnology and health science issues, intellectual property regimes, and contractual developments related to the global information economy. Some members of our first graduating class have moved on to work for U.S.-based law firms or technology companies, while others have decided to apply their new expertise by continuing on career paths with previous employers.

This April, after a long and selective admissions process, ten new students were selected to participate in the 2003-04 LLM program. The admissions committee was fortunate to receive applications from some of the most talented young professionals from around the globe.

Program directors seek out a diverse group of the best and brightest technology lawyers who wish to further their professional training by entering our LLM program. The incoming group of students reflects a wide array of experiences, interests and professional specializations. Drawn from eight different countries and four continents, our new students include attorneys at international law firms who specialize in IP and technology law, owners and in-house counsel of tech-based corporations, attorneys who have worked in the public sector for technology and science-related agencies, and scholars involved in the legal research and training that surrounds such issues.

For more information about the LLM. program in LST, please visit our website at: www.law.stanford.edu/admissions/adv/lst

Below, please find a brief biography of each of the selected candidates, followed in some cases by a short interview:



Oliver K. Breme, from Germany, studied law at the Rheinische Friedrich-Wilhelms-University of Bonn, where he also worked in the cyberlaw research center. He received

a doctorate from the University of Bonn for his thesis on liability in the field of IT security and digital signatures. Oliver has lectured on IT/IP law, privacy law, environmental law and criminal law at private education institutions.

His professional training includes work for a San Francisco law firm and a major role in the establishment and operation of one of Germany's first certification authorities for digital signatures and encryption. He has contributed significantly both to the development of the German digital signature act and to the integration of the respective European legislation. Oliver has acted as a legal and technical expert for German and European committees, offering numerous presentations on IT security, public key infrastructures (PKI), smartcards and cryptology. Until recently, this LLM candidate was in-house counsel for Element 5, a leading e-sales distributor of the products of over 5,000 international software companies. Oliver is a member of the German-American Lawyers' Association (GALA).

Oliver, why did you choose to get your LL.M. from Stanford Law?

I believe that the unique combination of an extraordinary faculty, small classes, a very focused program with a strong technological orientation, a highly dedicated staff, and the proximity of the Silicon Valley is a huge asset. If you add the beautiful campus, the

... fellow students from all over the world and the Californian way of living and learning, you sure get a truly magnificent combination.



Daniel Debow is from Toronto, Canada. He earned an LLB and an MBA from the University of Toronto (with a focus on corporate law, law and economics, and finance), and

a BA in psychology from the University of Western Ontario. While still in law school, Daniel co-wrote the business plan for an enterprise software firm called Workbrain, and upon graduation he promptly joined this company, taking on a variety of legal and operational responsibilities. He has developed standard license and services contracts, negotiated commercial contracts, and established HR and sales operations functions. Daniel's work has enabled Workbrain to grow to 265 employees and become one of the top 30 software firms (by revenue) in Canada. He now serves as Vice President of Marketing, leading a team in market analysis and strategy, demand generation, sales support and media/analyst relations.

Daniel has been a summer associate at Goldman Sachs in London and at Sullivan & Cromwell in New York. His academic interests thus lie at the intersection of technology, business and law. He is particularly interested in the effect of private contracting on the rate of technology adoption, the impact of enterprise software on the nature of the firm, and judicial choices that result in national differences in productivity.

Daniel, you've been in the LLM program for a few weeks now. How is it going?

The first few weeks here have been fantastic. Every day is one of discovery: a new corner of this amazing campus, a new

friend, or a great new class. I've been completely impressed with how approachable and interested the faculty are. It's obvious that they enjoy working with the LLM students. So far, so good!



Frederic Debusseré, from Belgium, earned his law degree from the Catholic University of Leuven, Belgium. He studied as an exchange student at Northwestern University School

of Law in Chicago. He is currently a researcher at the Interdisciplinary Centre for Law & Information Technology of the Catholic University of Leuven, where he teaches in the LLM European Legal Informatics Study Programme.

Frederic is also a junior associate with the Brussels-based international law firm

Stibbe. His practice at Stibbe touches on a wide variety of IT-related issues, including e-commerce, personal data protection (and digital privacy), electronic signatures, domain names, Internet service provider liability, and hardware/software outsourcing contracts. Frederic is the author of several publications and has spoken at a number of conferences on IT law issues.

Frederic, what is the most important legal issue in the field of technology law facing your country today?

Important technology law issues facing Belgium today include dealing with the recent E-Commerce Act of March 2003, the Anti-Spam Act of May 2003, and the Illicit Domain Name Registration Act of June 2003, as well as transposing the EU Directive on Privacy and Electronic Communications of July 2002 in a timely manner, i.e. by October 31, 2003.



Miyuki Hanai, from Japan, earned an LL.B. from the University of Tokyo. There, her coursework focused on commercial code, civil law, and the practice of international business

law. While working towards the LLB, she also joined the Legal Aid Service of the University of Tokyo, a pro bono legal counseling service.

Miyuki has since been working as an associate attorney with the Law Offices of Anderson Mori. She has had opportunities to work on wide-ranging legal matters for both Japanese and overseas clients, delving into IP, cross-border mergers and acquisitions, litigation (including the deposition of a U.S. litigation held in Japan), and more general corporate matters such as structured finance. In one case, she dealt with a civil action to obtain trademark and

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The Cutting Edge of Technology Law and Corporate Governance

On the evening of August 27, **Ralph Pais**, head of Fenwick & West LLP's international practice and popular negotiations lecturer at the Law School, treated our newly arrived LLM students to an appetizing dinner and reception at the firm's impressive new Mountain View offices. Following dinner, the students attended a fascinating set of presentations by Fenwick & West partners Mark Leahy and Lawrence Pulgram.

"What will become of public companies," Leahy pondered, "in light of the Sarbanes-Oxley Act of 2002?" Discussing the Act's roots in recent instances of high-profile corporate corruption and fraud, Leahy detailed the effects that this sweeping securities reform legislation will have on all components of public companies: boards of directors, CEOs and CFOs, auditors, and above all, lawyers advising corporate clients. Students asked whether increased litigation pressure might result in even higher CEO and executive salaries, whether the Act would force any changes in the governance of private



Pais



Leahy



Pulgram

companies, and how attorney-client privilege might be disrupted.

Lawrence Pulgram went on to address four provocative topics of technology law: copyright, the Digital Millennium Copyright Act, trade secrets and the first amendment, and the concept of trespass to chattel recently tested in the *Ticketmaster*, *Ebay*, and *Intel v. Hamidi* cases. As lead counsel for both Napster and ReplayTV, Pulgram analyzed how courts had restricted (and in rarer cases permitted) technologies for the "collection and circulation of information." Wary to draw firm conclusions about the future of IP legislation, he told the students, "Every day I open the paper and find out what the law [about the Internet] is today." Still, he did not hide his view that judges have recently acted more to limit than

to protect technological innovation and expression. He concluded by advising the LL.M. group to be creative in their efforts to navigate and anticipate the shifting sands of IP litigation.

In the next address, Pais launched into an interesting overview of the legal business and typical structure of U.S. law firms. Pais, who opened the evening by welcoming the international students to California, concluded by inviting these LLM students back at the end of the academic year to share their observations and evolved legal erudition.

Alumna Catherine Manley provided students with insights into life as an associate at a leading Silicon Valley law firm.

In view of the high level of discussion and the students' enthusiasm for the topics presented, it is clear that both our host as well as our LL.M. students have benefited from this unique opportunity to get to know one another and to exchange ideas.

Professor Henry T. Greely Discusses the New Center for Law and the Biosciences

Professor Henry (Hank) Greely is the C. Wendell and Edith M. Carlsmith Professor of Law at Stanford.

“I think most of the students who will be involved in the Center for Law and the Biosciences won’t go on to be academics or policy experts in think tanks. Most of them will go on to be practicing lawyers. But they will, in those roles, also be able to put to use for the good of their clients and the good of society their sophistication about the interaction of law and biology. This is true whether they’re writing patent applications, advising a bio-tech startup, or acting as in-house counsel for a pharmaceutical company. To be sophisticated about where the science is going -- how it could affect society and how society may react to that -- will be a very useful set of skills.” -- Professor Henry T. Greely

First of all, why a Center for Law and the Biosciences, and why at Stanford? How did you get involved with this idea?

Prof. Greely: What I do, and what I think there’s a need for is to look with a lawyer’s knowledge at science and society and try to figure out, first, where the science is likely to go. Second, if the science goes that way, what will the effects be on society? How will things change? Who will win, who will lose?

Third, I try to offer my own opinion on which of these changes would be good and which would be bad ... without implying a judgmental role that I don’t think I have. And then the fourth step is proposing interventions that try to maximize the benefits and minimize the harms of that science.

So for example, with genetic testing, I was involved in the mid-to-late ’90s in studies of genetic testing for breast cancer and Alzheimer’s disease. We tried to figure out where the science was going, what the effects of the ability to test for strong predispositions to those diseases would be, and whether those effects were good or bad. We proposed some policy changes to try to minimize the harms and maximize the benefits.

So that’s what I do, and I think that’s what John Barton also has largely done in his career. And I hope the Center for Law and the Biosciences can be a focus for work at the Law School and the University aimed at understanding and predicting the social effects of new biological technologies, and proposing legal changes to deal with them.

How much of the center’s work will focus on research being done at Stanford, and how much interest will there be in research elsewhere or in industry?

Prof. Greely: Well, you know, in the biological sciences, Stanford is a fantastic institution, so almost all the interesting work is being done here by somebody. But there’s no special priority to looking into work that’s being done at Stanford. It’s also being done everywhere else. There’s an enormous investment of energy, time, and



money around the world in bioscience research. So most of what we’ll look at will have some people doing it here at Stanford and lots of people elsewhere, both in academia and industry, working on the same sorts of issues.

Will there be active links between the center and the new Bio-X program?

Prof. Greely: I’m on the faculty leadership council for Bio-X, so I do link the two myself, in terms of knowing what’s going on here and knowing what’s going on over there. We’ll have to see how the relationship between the two evolves.

I think the other group on campus that we’ll most definitely be working closely with

would be the Stanford Center for Bio-Medical Ethics. I’m the chair of the steering committee of that, and we’ll work closely with them. Our focus would be more directly on legal issues; they have a broader focus, but the two organizations should be very complementary.

What kind of student involvement do you see resulting from the new center?

Prof. Greely: I think the students are absolutely essential. First, we have great students. They’re really smart, they’re hard-working, they’re fun, and a lot of them have interests in biological sciences. For the last few years, close to ten percent of the incoming class has had some significant bio background. Either they’re MDs, they’re PhDs, they’ve got Master’s in various bio fields, or they’ve been undergraduate biology majors.

The center will try to support, in every way we can, the research and writing they want to do on those kinds of interests. We hope to work closely with the new student group BioLaw and with SLATA, the Stanford Law & Technology Association, in planning joint activities. The center’s kickoff conference this February [entitled “*Unnatural Selection; Should California Regulate Pre-Implantation Genetic Diagnosis?*”] is going to be coordinated with BioLaw’s first conference [“*Brave New Law: Biotechnology and Human Reproduction*”].

At the very least, what I’d like to do is have the center sponsor and host a conference every year, sponsor quarterly lectures by major figures in the field, and then sponsor other smaller workshops, talks, seminars, as the opportunities arise.

What do you think the role will be for academic law programs such as these, in terms of industry-based research?

Prof. Greely: Well, there really is no industry-based research doing the sorts of things we're doing. There's an interesting, long-standing question about what's different – good and bad – about industry research in science versus university research in science. But the industry doesn't really pay any attention to where things are going, what the effects will be on society, other than occasionally wondering how they're going to market whatever they come up with.

I think that this whole idea of trying to predict and ameliorate the effects of new technology is a relatively new one. If you look back, arguably the biggest and most important technical change in the 20th century in the U.S. was the automobile. It changed the way our cities are laid out, it changed death rates, it changed everything. But nobody in 1910 asked Ford how the Model T was going to change the world. I think we've learned since then that it's a good idea to give some forethought to how things are going to effect the world. It's still an open question as to whether any of that foresight will actually be helpful.

Do you have any ideas about how pre-implantation genetic diagnosis (PGD), for instance, will change the way we think about reproduction?

Prof. Greely: It depends in part on how it's regulated, and it depends on how the science develops – not so much the process of PGD but the science of genetics. However, if it develops the way I think it's most likely to develop, parents going through in vitro fertilization in the near future are likely to have the opportunity to make lots of choices about their children's genetic traits. The easier ones will be things like sex, hair color, eye color, skin color, height; not unbounded choices, these cosmetic choices will be limited to what exists in the parents' genes, what the parents bring to the child through the egg and the sperm. If you create 12 embryos, you can test them all and give the parent a little description of what each of those embryos is likely to grow up like.

Now, if we're able to predict genetically other traits – personality traits or cognitive abilities, various skills – that could be an even greater change. And I don't know how I feel about it, actually. That's part of the reason I wanted to do a conference on this. I don't know what I think should be done.

Where do you look for answers to what should be done?

Prof. Greely: I try to figure out what the likely effects are more broadly, listen to a lot of people with their views on what the effects are going to be, and argue about how likely the scientists are to go way or the other. Oftentimes, it's very easy to say, "Well, if the world changes this way I don't like it," or "I don't think that would be a good change," either from a utilitarian or a non-utilitarian, deontological perspective.

But what makes this one particularly tricky is, for me at least, as a parent, I know that parents not only have the legal ability but have, culturally, the *duty* to change their children. We're supposed to raise them to be good people, and we do it from environmental inputs rather than conscious selection of particular genetic traits, but our goal is to mold our children to some extent. After a while, we realize that it's only to a limited extent they're capable of being molded. But does it change? Is it different to try to mold them through picking their genetic traits than to mold them by influencing their environment? It's not convincing to me that it is, but on the other hand it feels very worrisome to me. So I want to hear more.

How will you measure the success of the Center for Law and the Biosciences – publications, inventions, securing of funding, cooperation with other departments?

Prof. Greely: Ideas. How many good ideas we help bring to life and disseminate.

What are your interests? What are you working on right now, and are you publishing anything?

Prof. Greely: I've just finished a paper on some issues in the changes in neuroscience law. It's a background paper for an AAAS

[American Association for the Advancement of Science] workshop in a couple weeks and will later be published in a book in Canada. That's part of the broader interest I've got: I think neuroscience is where genetics was about 15 years ago. It's really at the edge of taking off, and holds lots of potential for affecting our lives.

I'm writing a paper for a sports law conference called "Disability Enhancement in the Arena of Sports," looking at enhancement issues primarily, which in a way gets back to PGD. If we allow athletes, distance runners, to train at high altitudes, this is good for them because their body produces more red blood cells at high altitudes, because of the lower oxygen levels. And therefore they can transmit more oxygen in their blood. The disadvantages of that are stroke and such, but we have no prohibition on that kind of training.

You can do the same thing by taking a biotech drug called erythropoietin. That's illegal; it will get you thrown out of the race and suspended from the sport.

The current controversy is over people who sleep in tents that keep the oxygen level low. They're training at sea level but sleeping in a simulated high altitude, which again increases the number of red blood cells.

Well ... how do you figure out what makes one of those clearly right, one of those clearly not OK, and one in the middle?

Sports provides a nice way of looking at these issues, for a couple of reasons. Unlike, say, enhancement in education of the workforce, sports has nice clear rules, rules that officials regularly have to enforce and make decisions on. And sports is a maximizing activity where people don't just try to be good enough, they try to be their very best; which makes these enhancement technologies more likely to be first used in sports. So I think it's an interesting question in and of itself. What should sports do in response to interventions that can help compensate for disabilities and then help improve someone beyond normal? And our response to this question also may serve as a useful model, or example, for the rest of

society in coping with enhancement technologies. I think these enhancement issues are really interesting.

And then the other thing I'm writing right now is on an experiment that would produce, if it works, a mouse with a brain made up of human neurons. Whether that's appropriate, inappropriate, how we should think about that kind of experiment.

So those are my three current short-term projects. And my longer-range project is to write a book about genetics and the law.

What effects will law have on the future of the biosciences – will the law have a restraining role, an advisory role, an ethical role, or none of the above?

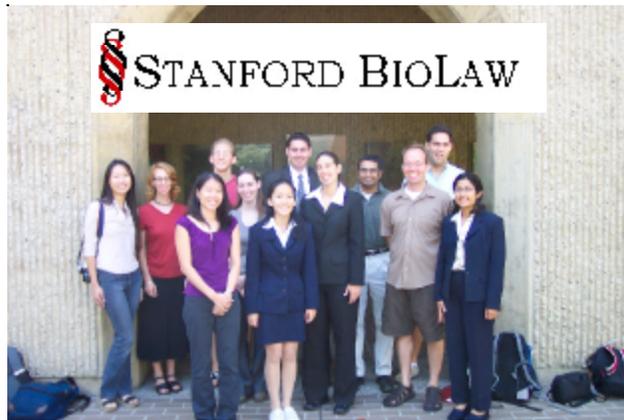
Prof. Greely: It can be all of the above. The sciences, whether they like it or not, live within a social context regulated by both law and nonlegal sanctions. We as a society can and do in a variety of ways control what science gets done, and law is one of our main paths for doing that.

More importantly, or maybe more oddly, you might ask why lawyers should be involved in this.

OK. Why should lawyers be involved in questions that are usually answered by science and business?

Prof. Greely: I think lawyers play a critical role – in many areas, we serve as the lubricant, as the grease, as the people who understand or can make themselves understand different sides of a problem and smooth the way for a good resolution.

So the scientists know where the science is going, but they don't have an idea of what its effect is likely to be on society or how to intervene. Social scientists or business-people, on the other hand, might in some cases have some ideas about its effect on society, but they don't necessarily have a good idea about how to intervene to deal with it. Lawyers can thus play a really important role because of our understandings of how government regulation works, and our ability to learn how technical changes are likely to unfold and how they



New Student Group to Focus on Law and Biotechnology

by Pablo Arredondo

Stanford BioLaw was founded in the fall of 2002 with the primary objective of promoting discourse and debate on the myriad issues arising at the interface of law and biotechnology. While many law schools have student groups that focus broadly on legal aspects of new technology, Stanford BioLaw is among the first law student groups to focus exclusively on biotechnology. Given the enormous difficulty and wide range of legal dilemmas ahead, however, we predict that we will not be the last.

Stanford BioLaw benefits from being located in the heart of "Biotech Bay", the region where many of the scientific discoveries that ushered in our tremendous new capacities happened, and where cutting-edge discoveries continue to happen. Dozens of leading biotechnology corporations can be found within just miles of the Law School. The campus is home to many biotechnology centers, including a new interdisciplinary research institute, Bio-X, and the recently founded Center for Law and the Biosciences. And, of course, world-famous weather always helps when trying to draw speakers.

Although Stanford BioLaw is run exclusively by law students, from the beginning we have made a point of advertising our events to graduate students in other schools. One of our goals is to create a forum for all interested parties, not just future lawyers, to debate the wisdom of biotechnology regulations, both proposed and enacted. In our first year we held four speaker events with topics including comparative database protection in Europe and the United States, cloning, international gene patent regimes, and the effect of gene patents on the accessibility of genetic testing. We look forward to many more lively discussions this year.

In February of 2004, Stanford BioLaw will hold its first annual Brave New Law conference. This year's conference will focus on legal issues surrounding the interface of biotechnology and human reproduction. We are grateful to the editors of the *American Journal of Bioethics*, who have agreed to publish the proceedings of the conference on their widely visited website. It is our hope that the Brave New Law conferences will become a consistent forum for in-depth discussion of new legislative attempts to regulate biotechnology.

are going to affect the society. We can play a unique role in trying to maximize the benefits and minimize the harms of new technology.

So you're generalists, in a way?

Prof. Greely: Yeah, we're the last of the great generalists.

Renowned IP and Antitrust Scholar Mark A. Lemley Visits Stanford Law School

“Stanford has an interesting collection of intellectual property scholars, including Larry Lessig, Peggy Radin, John Barton and Paul Goldstein. I look forward to talking and working with them this semester.”

So says Visiting Professor Mark Lemley, who is bolting from UC Berkeley’s Boalt Hall School of Law to teach at Stanford for the fall semester.



Professor Lemley received his J.D. from Boalt and his A.B. from Stanford.

Regarding his time at Stanford, Lemley says, “I will be teaching patent law and a seminar on intellectual property and antitrust law. My current work focuses on efforts to rationalize the patent system by changing the law relating to continuation applications, by changing the rules for determining willful infringement, and by

Lemley is a co-director of the Berkeley Center for Law and Technology. He teaches intellectual property, computer law, patent law, antitrust, and electronic commerce law. In addition to his teaching, Lemley practices law as counsel to the law firm of Keker & Van Nest, where he litigates and counsels clients in the areas of antitrust, intellectual property, and computer law. He is the author of six books and numerous articles on these and other subjects.

giving the courts greater leeway to adapt the rules of patent law to the needs of particular industries.”

We are very pleased to welcome Professor Lemley to the Program in Law, Science & Technology, and look forward to the results of his collaboration with students and faculty at Stanford Law School.

LST@Stanford: First, I was wondering why you have chosen to focus on the fields of patent law and antitrust in your scholarship. In light of your expertise regarding patents and antitrust, I thought it would be interesting to hear how you got started working in these areas, and why you continue to do so.

Prof. Lemley: I got interested in antitrust law in college here at Stanford, where I studied economics and industrial organization. My interest in patent law came out of its overlap with antitrust, though it has since come to dominate my scholarship. Patent law is one of the least theorized and least studied of all legal disciplines. There is so much work that needs to be done in this field.

Do you think that public attitudes towards the notion of intellectual property are changing, following from, say, the RIAA’s recent crackdown on illegal downloaders? Do you believe that academic lawyers have a responsibility to clearly explain to the public and to government officials just what IP means and stands for?

Intellectual property 30 years ago didn’t really impact the lives of most people. That has changed dramatically. IP stories are front-page news on a regular basis, and everyone from college students to parents has to confront legal issues they never would have encountered in the pre-digital world. Some members of the public will encounter these laws and recoil, saying, in effect, “How can this apply to me?” An academic’s job is to educate lawyers and the public about this legal system, but even more important is our obligation to make sure the system itself is working properly, and to speak out if we find it isn’t.

What are the most pressing issues in your field of study at this particular world historical moment? Do you believe that they will change much in upcoming years, or is there an aspect to patent law that is naturally resistant to changing social currents?

For patent law, the most pressing problem is abuse of the patent system. The system works pretty well, but as more people discover the importance of patents there are more and more cases in which the system is used to stifle innovation, not to promote it.

I don’t think the patent law can or should be indifferent to changes in the innovation process. Indeed, much of my work today is directed towards pointing out the ways in which the patent system can be tailored to meet the needs of an increasingly complex and heterogeneous world.

Students, Professors, and Industry Partners Flock to SLATA



by Rebecca Wais

The Stanford Law & Technology Association (SLATA) is a student-run organization keeping track of issues at the forefront of law and technology. SLATA's membership stretches back for almost two decades, linking today's students to some of the leading thinkers in the field. Former association members include Kent Walker '87, senior vice president at Liberate Technologies; Marc Rotenberg '87, executive director of the Electronic Privacy Information Center (EPIC), and Ivan Fong '87, senior counsel for information technology at General Electric. As one of the most respected student organizations at the Law School, and one of the best-known law and technology associations in the country, SLATA provides opportunities for law students in all degree programs to explore arising issues by meeting the practitioners, academics, and policy makers shaping the future of law and technology.

SLATA sponsors several different speaker series, including talks cosponsored with the Law, Science & Technology program and the Center for Internet and Society. SLATA also organizes "Pizza with the Profs" and "Lunch with the JDs." "Pizza with the Profs" provides informal lunch meetings for students and faculty addressing law and technology issues in their work. Faculty discuss a topic of their choice and field questions from students. "Lunch with the JDs" introduces students in all of Stanford's degree programs to leading lawyers and firms in private practice.

In addition to seminars and presentations, SLATA also sponsors a yearly conference. In past years, SLATA conferences have focused on such topics as bioterrorism, creating and protecting intellectual property in an international arena, and the interplay of new digital media, entertainment, and the law.

This year SLATA is engaged in a new cooperative project with the Center for Internet and Society: the *Packets* newsletter. The newsletter publishes summaries of important new court decisions relating to cyberlaw.

SLATA also provides a number of career and course-related services for law students. SLATA's **Mentoring Program** matches Stanford Law students with local practitioners in all areas of technology practice. Every year, SLATA assembles a mailing and contact list of law firms nationwide to assist students in their search for summer associate positions. SLATA also maintains **outlines** for many of the courses offered at the Law School – law students can download individual outlines from SLATA's website.

For further information visit the SLATA web site at <http://slata.stanford.edu>, or e-mail Co-Presidents Aaron Thacker (athacker@stanford.edu) and Rebecca Wais (rjw@stanford.edu).

CIS and SLATA launch **Packets 1.1**



The Center for Internet and Society's *Packets* newsletter is a bi-monthly publication written by Stanford Law School students who are members of the [Stanford Law And Technology Association \(SLATA\)](#). CIS staff, fellows, and volunteer attorneys edit *Packets*. Our purpose is to provide the legal community with concise descriptions of recently decided cyberlaw-related cases, and to point to the original decisions. We will distribute short summaries of the cases in the electronic version and host longer, more detailed

summaries, as well as a keyword searchable archive of past *Packets* on the CIS website.

The writers on the *Packets* editorial board are: Carl G. Anderson, Rob Courtney, JuNelle Harris, Rachel Kovner, Todd Lewellen, Stephany Lin, Stephen Bruce Lindholm, Jia Liu, Grace Park, Ji-Hyun Park, Jef Pearlman, Kateryna Rakowsky, Neil A. Rubin, and Jim Sojoodi.

Selected Contents from *Packets* Vol. 1, No. 1:

The complete first issue is available at <http://cyberlaw.stanford.edu/packets/>

- Actual Damages Denied for Overseas Copyright Infringement
- Court Denies Verizon's Motion to Quash RIAA's Subpoena and Motion to Stay Pending Appeal.
- Court Strikes Infringement Action against Pop-ups' Provider
- Ninth Circuit Rules Online Matchmaking Service Statutorily Immune for Identity Theft of TV Actress
- Online Application of Vermont's "Harmful to Minors" Law Violates First Amendment and Dormant Commerce Clause
- Free Speech Challenge to Trade Secret Injunction Rejected in California DeCSS Case
- Fight over the Applicability of GLBA Privacy Provisions to Lawyers to Continue
- Stay of New FCC Ownership Rules
- Summary Judgment Denied in DMCA Garage Door Opener Case
- Wine-by-Mail Ban Struck Down under Dormant Commerce Clause

Media X Begins Its Gradual Takeover of Stanford's Campus

Following through on its promise of a new interdisciplinary model, interactive technology network continues to take campus by storm.

Media X AT STANFORD UNIVERSITY

Pinning down Media X to one location on campus, or to one area of research, or to one collection of students and faculty is not an easy task. Interactive technology is the program's reason for being, but contributors to the advancement of such technologies at Stanford are a diverse lot, and it's tough to assemble them all in one place. For this reason, Media X has positioned itself as a mediator of sorts. Media X reaches out to student and faculty researchers who might benefit from interdisciplinary collaboration, and it simply connects them with others working on new information and communication technologies on campus, in industry, or in government. In a matter of months, Media X-mediated partnerships have given birth to a wide variety of projects that will shape the future of interactive technology.

The Media X program, which began its life as an initiative of several researchers at CSLI (the Center for the Study of Language and Information), is now a campus-wide network devoted to interactive computing. It flourishes due to the simplicity of its approach. Unlike traditional interdisciplinary programs, which tend to pull talented faculty away from their home departments (thus making these faculty into interdisciplinarians themselves), Media X unassumingly sets into motion an evolving forum where students, faculty, and industry members can interact. With its unique decentralized approach, it creates opportunities for faculty and students of all disciplines to explore new ideas and provide new innovative solutions to the many questions that surround interactive technologies.

The supporters of Media X span as wide a spectrum of research as the program's university participants. Prominent industry partners include Cisco, ATR, Epson, IBM, KDDI, Microsoft, Macromedia, Charles Schwab, NHK, NTT, Omron, Philips, SAP, Reuters, and SRI.

Media X provides its supporters "with a single portal to a broad and constantly growing range of research about the design and use of interactive technology."

Media X tends to fund research projects with a strong humanistic and user focus. Represented technologies include p2p networking, internet audio, medical information retrieval, electronic customer relationship management, natural language processing, voice user interfaces, information visualization, collaborative work and learning environments, hand-held devices, automatic language translation, wearable computing, interactive toys, and distance learning applications.

Keith Devlin, the Executive Director of Media X and known to KQED listeners as the man who can explain high-level mathematics to Joe Public, asks us to "think of the traditional liberal arts as the collection of intellectual topics that should be studied in order to be reasonably well equipped to play a full role in a culture dominated by the written word. In this vein, Media X is the collection of topics that should be studied in order to be reasonably well equipped to play a full role in a culture dominated by interactive media." (1)

The law plays a central role in this culture increasingly dominated by interactive media. Legal education will have to provide future lawyers with the vocabulary necessary to understand the challenges interactive media pose for the legal system and for our society at large. We therefore very much welcome the opportunity to become actively involved in the Media X project.

(1) From "Media X: The New Liberal Arts?" *On the Horizon*, Vol. 10, No. 2 (2002), pp. 15-17, Emerald Publishing, UK.

Media X funds research projects across the campus.

Departments and centers associated with Media X, in which Media X sponsored projects may be carried out, include:

[Center for Computer Research in Music and Acoustics](#) (CCRMA)

[Center for the Study of Language and Information](#) (CSLI)

[Center for Design Research](#)

[Communication Department](#)

[Computer Science Department](#)

[Digital Art Center](#)

[Law School](#)

[Linguistics Department](#)

[Medical Informatics](#)

[Philosophy Department](#)

[Psychology Department](#)

[School of Education](#)

[School of Engineering](#)

[School of Medicine](#)

[Stanford Center for Innovations in Learning](#) (SCIL)

[Symbolic Systems Program](#) (SSP)

Continued from page 3

in the process, assisted a professor in his preparation of a legal opinion to support her claim. She has also handled a patent infringement, and taken part in negotiations regarding research and development agreements. In her spare time, Miyuki participates in IP study groups inside and outside the context of her practice.



Rodrigo Orenday Serratos earned his LLB degree from the Escuela Libre de Derecho in Mexico City, where he participated in the Phillip C. Jessup International Law Moot Court

Competition. He has also received postgraduate diplomas in Intellectual Property, International Financial Law, Democratic Governance, and International Business Law from the aforementioned school. With this strong corporate background, Rodrigo is able to serve the Mexican Central Bank by working on arbitration, the negotiation of international treaties and contracts, the establishment of subsidiary financial institutions and representative offices, as well as intellectual property matters. Other areas of interest and engagement include the process of legal reform (primarily concerning freedom of information), settlement systems, electronic signatures, and personal data protection.



Ohad Mayblum, from Israel, earned his LLB from the University of Haifa, where he also earned a BA in economics. Ohad has been working as an associate at Eitan, Pearl, Latzer

& Cohen-Zedek, Israel's largest technology-oriented law firm. He practices intellectual property litigation, licensing, and employment law. He has represented numerous multinational technology companies in deals in Israel and has provided intellectual

property counsel to international and domestic companies. Ohad has authored a number of publications and given presentations on issues dealing with employment law, e-commerce transactions, intellectual property law, and privacy law.



Takatoshi Monya is from Japan, and he earned his LLB from the University of Tokyo. As an associate with Nishimura & Partners, one of Japan's largest law firms, Takatoshi practices

in many different legal areas. He has worked on finance law, litigation, and both domestic and international corporate law. His work on litigation has involved a special emphasis on matters of intellectual property.

In 2002 Takatoshi took leave from Nishimura & Partners and began serving as Deputy Director of the IP Policy Office at

the Japanese Ministry of Economy, Trade, and Industry. In doing so, he became the first Japanese lawyer to work as a government official and to take direct involvement in the reform of Japanese IP legislation. Takatoshi drafted amendments to the Unfair Trade Competition Law and researched legal structures to be used to facilitate IP securitization in Japan.

Previous to working for the Japanese government, Takatoshi had studied IP law intensively at the University of Washington and conducted research on IP law at the Max Planck Institute in Munich. During his professional career, Takatoshi has also authored various papers and lectured on issues dealing with IP law and finance law. Outside the office, he has competed in full-contact karate.

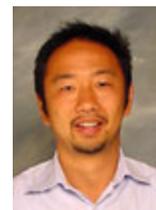


Carlos Motta, from Brazil, earned his LLB from the Faculdade de Direito da Universidade Mackenzie in 1999. In 2000, he was a guest student in the graduate program of E-

Commerce at the Faculdade de Direito do Largo São Francisco (USP/SP). Carlos is currently an associate with the firm Souza, Cescon Avedissian, Barrieu e Flesch, where he practices in the areas of Corporate Law (primarily Mergers & Acquisitions) and IT Law. Previously, Carlos was fortunate to have worked with two of the most prominent Brazilian law firms (Machado, Meyer, Sendacz e Opice; and Goulart Pentead, Iervolino e Lefosse, associated with Linklaters). As an academic, he has authored numerous publications and given presentations on a variety of issues related to IT Law. He is also the cofounder and general coordinator of the Brazilian Centre of Internet Legal Studies (www.cbeji.com.br). As the premier

Internet legal resource in Brazil, the site provides articles, legislation, jurisprudence, and news related to internet law in Brazil and abroad. Since 2001, Carlos

has been a member of the Computel Law Association.



Hideto Niioaka, from Japan, is a graduate of the Ludwig-Maximilian University in Munich, Germany. He specialized in tax law (Fachanwalt für Steuerrecht) and engaged in research experiences at the University of

Valencia, Spain, before finishing his doctoral thesis, entitled "Clinical Trials in Patent Law – A Comparative Study in Europe, Japan and U.S." Later, he worked as a fellow and research assistant for Prof. Dr. h.c. Josef Straus at the Max Planck Institute for Intellectual Property Law, Unfair Competition and Tax Law.

LLM in Law, Science & Technology

Hideto is currently an associate at the Frohwitter Intellectual Property Counselors law firm, where he practices as one of the few Japanese-German Attorneys-at-Law in Europe. Working for North American, Latin American, Asian, and European clients, his experiences at Frohwitter are particularly focused on patent law. Hideto analyzes litigation, licensing (in support of technical standardization), the diligence of IP portfolios in healthcare and mobile telecommunication technology fields, pharmaceutical regulatory affairs, IP as assets for M&As, and corporate law. He has worked to devise M&A deal structures, and participated in the drafting and negotiation of major corporate transactions.



Ji-Hyun Park, from Korea, earned her LLB from Yonsei University in Seoul, where she also obtained her Masters in Civil Law with a concentration in Property Law. She is currently serving in the World Intellectual Property Organization (WIPO) as a member of the legal staff in their Arbitration and Mediation Center. She has substantial experience in administering domain name disputes and she has also spent a large part of her career managing arbitration cases for international IP disputes, especially those concerning license agreements and distribution contracts. Ji-Hyun has spoken at several conferences on Digital Copyright in E-Commerce transactions.

Ji-Hyun, how do you hope the LLM Program in Law, Science & Technology will contribute to your professional legal training?

It will broaden my horizon, giving me an opportunity to learn about global issues as well as those important in the U.S. It will help me to see the bigger picture of what I have been doing, and see what future prospects can be explored from the academic point of view.

“You Can’t Sue Me (Here)!” Questions of Jurisdiction in a Global Marketplace

Ten years into the internet age, doing business over the Internet still raises questions of personal jurisdiction. Individuals buying and selling over the Internet find themselves hauled into a court a thousand miles away. Businesses are sued for libel across the globe. Foreign hackers face extradition orders calling on them to account for their crimes. Courts around the world have come to radically different jurisdictional conclusions -- even when supposedly applying the same standards.



On June 25, this state of affairs was the focus of a high-level panel discussion entitled ““You Can’t Sue Me (Here)!” Questions of Jurisdiction in a Global Marketplace.” The panel featured the following distinguished speakers:



Mark Chandler



Ronald Katz



Jon Sobel



Jay Monahan

Chandler serves as General Counsel at Cisco Systems, Inc.; **Katz** is a Partner at Manatt, Phelps & Phillips, LLP; **Sobel** is the Senior Vice President and General Counsel at Yahoo, Inc.; and **Monahan** is the Vice President and Deputy Counsel for Litigation and Intellectual Property at eBay, Inc.



Intellectual property expert **Paul Goldstein**, the Stella W. and Ira S. Lillick Professor of Law at Stanford Law School, moderated the discussion. The event, which attracted a crowd of over 125 people, was sponsored by the Stanford Law Society of Silicon Valley, the Stanford Center for E-Commerce of the Stanford Program in Law, Science & Technology, and the Churchill Club.

Leaders in the Silicon Valley Legal Community Come to Stanford to Discuss E-commerce Best Business Practices Project

On September 15, following an invitation from the Stanford Program in Law, Science & Technology and its Stanford Center for E-Commerce, a group of Silicon Valley legal community leaders came to Stanford to discuss a collaborative project focusing on Silicon Valley best business practices. The Center for E-Commerce originally proposed this project to further its mission of assisting in and coordinating the efforts of the business community to proactively address the many pressing legal questions surrounding online business activity. The goal of the project is to find some practical answers and solutions by bringing the Silicon Valley legal and business community together with other professionals from around the globe, so that these individuals can share their ideas and strategies for dealing with the legal uncertainties that arise when doing business online.

The Center for E-Commerce plans to launch this ongoing project with a one-day kick-off conference on best practices associated with the online distribution of software and other digital media. The program, tentatively scheduled for next spring, will address the question of how companies develop best practices and then focus on specific topics, such as globalization, security, piracy, taxation, and privacy.

The Center for E-Commerce and the Stanford Program in Law, Science & Technology are striving to expand their role as the preeminent sites for intellectual exchange between leading experts in the field of law and technology. This September luncheon enabled us to gather the unique insights of a number of legal pioneers in the e-commerce business community.

We thank the following individuals for providing invaluable input during the meeting:

- Marc Berejka** -- Senior Director of Public Policy & Communications, Microsoft Corporation
- Jim Brelford** -- Jones Day

- Andrew Bridges** -- Wilson Sonsini
- Dan Cooperman** -- General Counsel, Oracle Corporation
- Bill Cosden** -- Vice President & General Counsel, Active Technologies, Inc.
- Reggie Davis** -- Senior Litigation Counsel, Yahoo! Legal Department
- Keith Gottfried** -- Senior Vice President-Law and Corporate Affairs, General Counsel, Corporate Secretary & Chief Legal Officer, Borland Software Corporation
- Michael Jacobson** -- General Counsel, eBay, Inc.
- Paul Jahn** -- Morrison & Foerster, LLP
- Theodore Jones** -- Manatt, Phelps & Phillips LLP
- Ken Kaufman** -- Skadden, Arps, Slate, Meagher & Flom LLP
- Ron Laurie** -- Skadden, Arps, Slate, Meagher & Flom LLP
- Heather Rafter** -- Director of Legal Affairs Digidesign, a division of Avid Technology, Inc.
- Michael Shpizner** -- General Counsel, Fujitsu America, Inc.
- Ross Veltman** -- Ivy Associates

Also contributing to the meeting were **Ian Ballon**, who is the Executive Director of the Center for E-Commerce and a partner at Manatt, Phelps and Phillips, LLP, **Prof. Margaret Jane Radin**, who directs the Program in Law, Science & Technology, and Stanford Law School Dean **Kathleen M. Sullivan**.



Ian Ballon,
Executive Director
of the Center for
E-commerce



Prof. Margaret Jane Radin,
Director of the
Program in Law,
Science & Technology



Kathleen M. Sullivan,
Dean of Stanford
Law School

Free Software Licensing and the GNU General Public License

On August 8, 2003, the Free Software Foundation (FSF) conducted a one-day seminar on the GNU General Public License at Stanford University. The seminar, cosponsored by the Stanford Law School Center for Internet and Society (CIS), was led by **Daniel Ravicher**, of Patterson Belknap Webb & Tyler LLP, and **Bradley M. Kuhn**, Executive Director of FSF. The day's proceedings offered lawyers

and businesspeople a complete introduction to the legal issues surrounding the development and distribution of free software. Presenters paid particular attention to the GNU operating system and the Linux operating system kernel. In the morning session, Mr. Kuhn provided a general overview of the GNU GPL and laid out the motivations behind its creation.

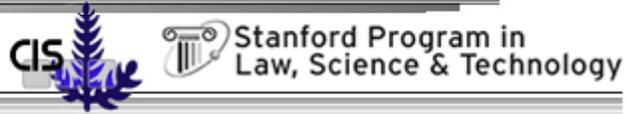
During the afternoon, Mr. Ravicher focused on the detailed legal implications of the license.

CIS Executive Director and Stanford Law Professor Lawrence Lessig spoke during the lunch.



----- UPCOMING EVENTS -----

Securing Privacy in the Internet Age



CALL FOR PAPERS

A Stanford Law School Symposium: Securing Privacy in the Internet Age

What legal regimes or market initiatives would best prevent the unauthorized disclosure of private information while also promoting business innovation?

**March 13-14, 2004
Stanford Law School**

As individuals do more -- shopping, talking, working -- on-line, they leave private information behind in databases stored on Internet-connected servers. Companies store proprietary data on networked servers connected to the Internet. Computer security experts struggle to develop technology and best practices to protect this information from unauthorized intruders or inadvertent leaks. Are private initiatives sufficient to protect private and confidential information, or should the law allocate the responsibility of keeping the server secure, and if so, on whom? And will the imposition of this legal and economic burden impede further exponential advances like those the computer industry has made in the past decade?

The Center for Internet and Society (CIS), part of the Law, Science & Technology Program (LST) at Stanford Law School, announces an open call for papers addressing the ways in which application of various legal doctrines could induce software vendors, hardware companies, and system administrators to adopt security-enhancing practices, report unauthorized disclosures of private information, and properly value and remedy harm flowing from privacy breaches, while promoting vigorous competition and innovation.

In the selection process, papers offering new perspectives, novel analysis, or innovative prescriptions will be given preference. Proposals from legal and other academics, economists, lawyers, scientists and technologists, as well as new voices are encouraged. Some suggested topics are posted on the conference website at: <http://cyberlaw.stanford.edu/privacysymposium/>

The event is funded by a generous grant from the cy pres fund established in the *Supnick et al. v. Amazon.com, Inc. and Alexa Internet, Inc.* litigation. We are able to offer free admission to the symposium and anticipate a large audience of academics, executives, students, and U.S. and foreign policy makers. Those selected to present papers will be reimbursed for two-week advance purchased coach airfare to California and for two nights' stay at the Westin Palo Alto hotel. Interested parties should submit a 200-word abstract describing the proposed paper to <http://cyberlaw.stanford.edu/privacysymposium/form.html>. The deadline for submissions is October 27 and the selected presenters will be notified by mail by November 10. The website also allows visitors to register to be notified when we finalize the symposium schedule.

Papers will be due May 3, 2004. The symposium editors will select the papers, which will be published in a scholarly volume under a Creative Commons license that will allow authors to submit their papers to other publications, including law journals.

The symposium editors are:

- * Margaret Jane Radin, Wm. Benjamin Scott and Luna M. Scott Professor of Law, Director, Stanford Program in Law, Science & Technology
- * Anupam Chander, Professor, UC Davis School of Law, Visiting Professor, Stanford Law School, Spring 2004
- * Lauren Gelman, Assistant Director, Center for Internet and Society, Stanford Law School

If you have questions, you are welcome to contact Lauren Gelman, at gelman@stanford.edu. The conference is organized by the Center for Internet and Society, part of the Program in Law, Science & Technology at Stanford Law School.

CyberSecurity, Research and Disclosure: November 21-22, 2003

Upcoming conference to explore relationship between computer security, privacy, and disclosure of information about security vulnerabilities.

September 11 gave new urgency to the debate over whether information collection and dissemination is dangerous or empowering. One view is that vulnerability information should be kept secret and out of the hands of potential criminals and foreign agents. Another view is that the public needs to be informed about security weaknesses, so that people can take appropriate precautions and so that there will be a constituency to pressure for the rapid repair of vulnerabilities. Meanwhile, policy makers struggle to find a balance between promoting security research, constructive information sharing, remediation, and protecting commercial interests. Industry has tried to develop "best practices" for reporting and repairing vulnerabilities, but major disagreements -- over how much information to disclose, to whom, and when -- persist.

The federal government has tried to both establish standards for commercial entities to share information about vulnerabilities and to pass laws to deter the distribution of information that may enable cyberattacks. However, critics say these initiatives help only a select few, threaten proprietary information, deter legitimate security research and are overly expensive. During the course of this two-day-long conference, featured speakers and participants will work towards a solution for both industry and government that promotes computer security and addresses the economic, governmental, and social issues that arise under current research and reporting practices.

Audience

The relevant audience for this conference includes computer security researchers and practitioners, computer science academics and professionals, hackers, policy formulators, software vendors and writers, commercial entities that use networked computers, consumers, officials charged with increasing government and national security and security-critical infrastructure, including law enforcement and national security officers, consumer rights advocates and civil libertarians.



CyberSecurity, Research and Disclosure

About the



Stanford Program in Law, Science & Technology

The Stanford Program in Law, Science & Technology (LST) combines the resources of Stanford Law School -- including renowned faculty experts, alumni practicing on the cutting edge of technology law, technologically savvy and enthusiastic students, and a location in the heart of Silicon Valley -- to address the many questions arising from the increasingly prominent role that science and technology play in both national and global arenas. The program acts to help legal professionals, businesspeople, government officials, and the public at large to identify those questions and find innovative answers to them.

The program seeks to:

(1) Give every Stanford Law student the opportunity to address these issues through innovative coursework, in preparation for

practice at the highest level of law's intersections with science and technology.

(2) Raise professional understanding and public awareness of technical and ethical challenges.

(3) Promote informed public policies on science and technology in national and global arenas.

(4) Contribute to the international exchange of ideas in the field of Law, Science, and Technology.

To learn more about law, science, and technology-related events taking place at the Law School, at Stanford University, and in the Silicon Valley, subscribe to the Law, Science & Technology listserv, found at the LST website: <http://lst.stanford.edu>.

This newsletter was prepared by:

Roland Vogl, Executive Director, Stanford Program in Law, Science & Technology, and Editor-in-Chief of LST@Stanford

and

Nicholas Bramble, designer and lead writer

Many thanks also to **Professor Margaret Jane Radin**, Director of the Stanford Program in Law, Science & Technology; **Ann Dethlefsen**, Director of Communications; **Eric Ow**, Web page designer and computer coordinator; and **Krista Anderson**, editorial assistant. For questions, suggestions, and future story ideas, email either **Roland** at rvogl@law.stanford.edu or **Nicholas** at nbramble@stanford.edu.