

# KRISTELIA A. GARCÍA

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

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## ACADEMIC APPOINTMENTS

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

## EDUCATION

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

## PUBLICATIONS AND WORKS-IN-PROGRESS

### ARTICLES

*A Reconsideration of Copyright's Term*, 71 ALABAMA L. REV. \_\_\_ (2019)(with Justin McCrary)(52 pages)

- Selected for presentation at the Annual Congress of the Society for Economic Research on Copyright Issues (SERCI) (Faculté d'économie) for 2019
- Selected for presentation at the Annual Meeting of the American Law & Economics Association (ALEA) for 2019

*Copyright Arbitrage*, 107 CALIF. L. REV. 199-266 (2019)

- Awarded best paper in "Copyright, Entertainment, Media, Art, Design, and Sports Law" for 2018 by the Atlas Intellectual Property Inn of Court
- Placed in Top 10 general law journal

*Facilitating Competition by Remedial Regulation*, 31 BERKELEY TECH. L. J. 183-258 (2016)

- Awarded a Mark Twain Fellowship by the Center for the Protection of Intellectual Property
- Placed in #2 ranked specialty law journal

***Penalty Default Licenses: A Case for Uncertainty***, 89 N.Y.U. L. REV. 1117-1183 (2014)

- Lead article
- Placed in Top 10 general law journal

***Private Copyright Reform***, 20 MICH. TELECOMM. & TECH. L. REV. 1-43 (2013)

- Lead article
- Published in Top 10 specialty law journal
- Reviewed for JOTWELL by Prof. Rebecca Tushnet: “Disruptive Contracting in Digital Music,” (September 10, 2013).

CHAPTERS, ESSAYS & OTHER WRITINGS

***Contracts v. Copyright: Contemporary Musician Income Streams*** (forthcoming chapter in *Oxford Handbook of Music Law & Policy*, OXFORD UNIVERSITY PRESS 2019)

***Technological Rights Accretion***, 36 YALE J. ON REG.: NOTICE & COMMENT (Sept. 19, 2018)(online companion to #1 ranked specialty journal)

***Improving the Quality & Consistency of Copyright Infringement Analysis in Music***, BERKELEY TECH. L.J. COMMENTARIES (Jan. 23, 2018) (online companion to #2 ranked specialty law journal)

***Royalty Securitization***, HARVARD J. LAW & TECH. DIGEST (Oct. 23, 2017) (online companion to #1 ranked specialty law journal)

WORKS-IN-PROGRESS***Contracting into Property Rules*** (full-length article)

*Despite its use of the term “property,” intellectual property generally—and copyright in particular—have evolved into increasingly regulatory areas of law. In a marked departure from property rules’ ex ante negotiations, the public law of copyright has introduced a series of compulsory licenses covering everything from satellite television to cover songs. Other statutory sections also resonate in a liability rules approach: For example, the first sale doctrine allows a lawful owner of a copyrighted work to sell, lease, or lend a copyrighted work without permission of, or payment to, the copyright holder. The fair use doctrine outlines several categories of use for which a copyrighted work may be used without permission or payment. Performances and displays of copyrighted material for educational or religious purposes are also exempt from infringement, again without permission from, or payment to, the copyright owner.*

*In contrast to the this shift toward liability rules in the public law of copyright, private ordering in the copyright space has seen an unexpected and counterintuitive return to traditional property-like terms. This Article presents a series of recent, private copyright agreements whose terms resemble property rules despite the existence of a statutory, liability rule alternative. This is interesting for a number of reasons, not least of all because the conventional justification for compulsory licensing is that it lowers transaction costs and alleviates potential bottlenecks. A private return to property rules in the copyright context counters the conventional wisdom that property rules induce more (and more efficient) contracting in two ways: First, by showing that liability rules can also induce contracting; and second, by demonstrating that a default of poorly-tailored liability rules can lead to more (and more efficient) contracting whose terms resemble property rules.*

**Copyright Fiduciaries** (full-length article)

Creators of copyrighted works frequently assign their copyrights to an intermediary such as a record label, a television studio, or a book publisher. These assignments are usually the product of a contractual agreement in which the intermediary offers an upfront payment as consideration. Because of this contractual relationship, the law has traditionally held that intermediaries do not serve as fiduciaries of the artists whose work they acquire.

This Article will show that many of the contracts at issue in copyright are more properly characterized as partnerships, thereby invoking fiduciary obligations owed by both parties. This novel proposal has far-reaching implications for the entertainment industries, and for the way we think about the power balance between creators and intermediaries.

**SELECTED AWARDS, GRANTS AND FELLOWSHIPS**

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

**SELECTED SCHOLARLY PRESENTATIONS*****Contracting into Property Rules***

- Intellectual Property Scholars Conference (DePaul University College of Law, Chicago, IL – August 2019) (selected from call for papers)

***A Reconsideration of Copyright's Term***

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

***Copyright Arbitrage***

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

***Facilitating Competition by Remedial Regulation***

- Copyright Scholarship Roundtable (University of Pennsylvania Law School, Philadelphia, PA – November 2015) (selected from call for papers)
- Spangenberg Center for Law, Technology & the Arts Faculty Colloquium (Case Western Reserve University School of Law, Cleveland, OH - November 2015) (invited)
- Brigham Young University Law and Entrepreneurship Colloquium (Provo, UT - October 2015) (invited)
- Intellectual Property Scholars' Conference (DePaul University Law School, Chicago, IL - August 2015) (selected from call for papers)
- Searle Center Cable Academic Workshop (Northwestern University Law School, Chicago, IL – May 2015) (invited)
- Intellectual Property Law Colloquium (Marquette University Law School, Milwaukee, WI - April 2015) (invited)
- Intellectual Property in the Trees Workshop (Lewis & Clark Law School, Portland, OR - November 2014) (invited)
- Colorado Bar Association Intellectual Property Section Meeting (Denver, CO - September 2014) (invited)
- Intellectual Property Scholars Conference (University of California Berkeley School of Law, Berkeley, CA - August 2014) (selected from call for papers)
- Mark Twain Copyright Fellowship Conference II (George Mason University School of Law, Arlington, VA - June 2014) (invited)
- Intellectual Property Scholars Roundtable (Drake University Law School, Des Moines, IA - March 2014) (selected from call for papers)
- Mark Twain Copyright Fellowship Conference I (New Orleans, LA – January 2014) (invited)

***Penalty Default Licenses: A Case for Uncertainty***

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

***Private Copyright Reform***

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

***Contract v. Copyright: Contemporary Musician Income Streams***

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

***Content ID, or, Who Needs the DMCA?***

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

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

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

***Substantial Similarity as Fair Use in Music***

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

***Industry Panels, Commentary, and Conference Moderation***

- “Content in a Multiplatform World and Related Legal Issues,” Moderator and Faculty, 17<sup>th</sup> Annual Rocky Mountain Intellectual Property & Technology Institute: IP on the Silver Screen – Lights, Cameras, Action!, May 30-31, 2018, Westminster, Colorado
- “Section 512 Safe Harbor: Challenges and Opportunities in User-Generated Content,” Host & Moderator, March 8, 2018, University of Colorado Law School, Boulder, Colorado.
- “Policy and Predictions in an Era of Rapid Technological Change,” Moderator, Regulating Computing and Code Conference, February 12, 2018, University of Colorado Law School, Boulder, Colorado.
- “Blurred v. Bright: The Changing Analysis of Copyright Infringement in Music,” Host & Moderator, March 23, 2017, Silicon Flatirons Center for Law, Technology and Entrepreneurship at the University of Colorado, Boulder, Colorado.
- “Innovation and Incentives in the Creative Arts,” Host & Moderator, March 3, 2016, Silicon Flatirons Center for Law, Technology and Entrepreneurship at the University of Colorado, University of Colorado, Boulder, Colorado.
- “Innovation in the Creation and Distribution of Content,” Host & Moderator, Silicon Flatirons Center for Law, Technology and Entrepreneurship at the University of Colorado, March 5, 2015, Boulder, Colorado.
- “Intellectual Property Strategy and the Long Tail: Evidence from the Recorded Music Industry,” Discussant, Fourth Annual Research Roundtable on the Law and Economics of Digital Markets, Searle

Center on Law, Regulation, and Economic Growth, Northwestern University Law, October 9-10, 2014, Chicago, Illinois.

- “Technological Change, Ethics, and the Law,” Panelist, Gathering of the Bench and Bar Conference, October 3, 2014, Boulder, Colorado.
- “The Future of Copyright Competition Policy,” Colorado Bar Association IP Section, September 29, 2014, Denver, Colorado.
- “Beg, Borrow or Steal: Art and Copyright Law,” Presenter, South by Southwest Music Conference, March 14, 2014, Austin, Texas.
- “Compulsory Licenses and Online Music,” Presenter, South by Southwest Music Conference, March 13, 2014, Austin, Texas.
- “Private Rights Creation & Default Penalty Licenses,” Presenter, 7th World Intellectual Property Organization (WIPO) Advanced Research Forum on Intellectual Property Rights, May 28-30, 2013, WIPO, Geneva, Switzerland.
- “The Artist’s Copyright Conundrum,” Presenter, South by Southwest Music Conference, March 14, 2013, Austin, Texas.
- “Yours, Mine and Ours: Ownership of Cultural Capital,” Panelist, Entertainment and the Law Conference, October 19-21, 2012, Yale Law School, New Haven, Connecticut.
- “Copyright,” Moderator, TPRC Annual Research Conference on Communication, Information and Internet Policy, September 21-23, 2012, George Mason University School of Law, Arlington, Virginia.
- “Movies and Music Go Social,” Panelist, Digital LA, September 19, 2011, Santa Monica, California.
- “It’s All About the Music: An Examination of the D.I.Y. Approach to a Music Career,” Panelist, Yale in Hollywood Summit: What Inspires You?, March 5, 2011, New York, New York.
- “Artists Go Social,” Panelist, Digital LA, April 12, 2010, Los Angeles, California.
- “Music Now! Innovations & Business Models,” Panelist, Yale in Hollywood Summit: Leading Through Innovation, March 12, 2010, Universal City, California.

### TEACHING EXPERIENCE

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

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

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

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

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

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

### **SERVICE TO LAW SCHOOL**

Appointments Committee, Fall 2018-Spring 2019

Admissions Committee, Fall 2017-Spring 2018

Peer Evaluator for Promotion & Tenure Committee, Fall 2017

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

Appointments Committee, Fall 2016-Spring 2017

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

Dean Search Committee, Fall 2015-Spring 2016

Faculty Advisor Program, Fall 2015-Spring 2016

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

Technology Committee, Fall 2014-Spring 2015

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

### **SERVICE TO UNIVERSITY**

Silicon Flatirons Executive Director Search, Spring 2019

ATLAS Faculty Advisory Board, Fall 2017-present

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

### **SERVICE TO PROFESSION**

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

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

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

Mentor, Techstars Music, Fall 2016 - present

### **BAR MEMBERSHIP**

California (admitted 2006)

New York (admitted 2003)

## OTHER EMPLOYMENT

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

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

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

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

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

## PRESENTATIONS, MEDIA, AND EXPERT CONSULTATION

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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