

H. TOMÁS GÓMEZ-AROSTEGUI

CURRICULUM VITAE

Kay Kitagawa and Andy Johnson-Laird IP
Faculty Scholar and Professor of Law
Lewis & Clark Law School
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ACADEMIC POSITIONS

- 2006–Present Lewis & Clark Law School, Portland, OR
Kay Kitagawa and Andy Johnson-Laird IP Faculty Scholar (2013–Present)
Professor of Law (2015–Present)
Associate Professor of Law with Tenure (2011–2015)
Associate Professor of Law (2009–2011)
Assistant Professor of Law (2006–2009)
- Regular Courses: History of the Common Law; Civil Procedure; Torts; Trademark
and Unfair Competition Law
- Past Courses: Copyright Law (Spring '07, '13, '17); Intellectual Property Survey
(Spring '17); Cyberspace Law (Fall '06, Spring '16); History of Anglo-
American Copyright Law (Fall '12, '14); Information Privacy Law
(Fall '07, '08, Spring '11); International IP Law (Fall '07, '09, '10,
Spring '15)
- 2019–2020 Thomas Edison Innovation Fellowship, Center for the Protection of Intellectual Property,
Antonin Scalia Law School, George Mason University, Arlington, VA
Non-Resident Fellow for 2019–2020
- 2011–2012 The George Washington University Law School, Washington, DC
Visiting Associate Professor of Law
- 2015–2016 University of Oslo, Faculty of Law, Oslo, Norway
2004–2010 Department of Private Law / Norwegian Research Center for Computers and Law
LLM Evaluation Committee (2015–2016)
Supervisor of Examiners (2007–2010)
Visiting Researcher and Lecturer (Fall 2004, 2005–2006)
- 1995–1997 University of Southern California Law School, Los Angeles, CA
Legal Writing Instructor

EDUCATION

- 2003–2004 University of Oslo, Faculty of Law, LL.M. 2004, Oslo, Norway
Norwegian Research Center for Computers and Law
- 1994–1997 University of Southern California, J.D. 1997, Los Angeles, CA
Order of the Coif (top 10%)
Southern California Law Review
Notes Editor and Executive Committee Member 1996–1997
Staff Member 1995–1996
Legal Writing Instructor 1995–1997
Latino Law Students Association (formerly La Raza)
USC Latino Honor Society
- 1989–1993 University of Southern California, B.A. History 1993, Los Angeles, CA
Dean's List (four semesters)

OTHER PROFESSIONAL EXPERIENCE

- 2002–2003 Hogan & Hartson LLP, Denver, CO
Litigation Associate
- 1999–2001 O'Melveny & Myers LLP, Century City, CA
Litigation Associate
- 1998–1999 Judge John C. Porfilio, U.S. Court of Appeals for the Tenth Circuit, Denver, CO
Law Clerk
- 1997–1998 Judge Edward Rafeedie, U.S. District Court for the C.D. of Cal., Los Angeles, CA
Law Clerk
- 1996 O'Melveny & Myers LLP, Century City, CA
Summer Associate
- 1995/96 Gibson, Dunn & Crutcher LLP, Los Angeles and Century City, CA
Summer Associate
- 1994 Dove Tree Canyon Software, San Diego, CA
Computer Programmer

PUBLICATIONS & PROJECTS

Articles & Book Chapters

The Right to a Jury Trial for Disgorgement in IP Cases (in progress)

Patent Validity Litigation in 18th Century England and the Right to a Jury Trial (with Sean Bottomley, in progress)

English Legal History at the Supreme Court (in progress)

The Traditional Burdens for Final Injunctions in Patent Cases c.1789 and Some Modern Implications (with Sean Bottomley), 71 CASE W. RES. L. REV. __ (forthcoming 2020), <http://ssrn.com/abstract=3687893> [solicited symposium contribution]

Privy Council and Scire Facias 1700–1883: An Addendum to the Brief for H. Tomás Gómez-Arostegui and Sean Bottomley as Amici Curiae in Support of Neither Party, <http://ssrn.com/abstract=3054989> (Oct. 18 & Nov. 6, 2017) (with Sean Bottomley) [43pp]

Cited in *Oil States Energy Serv., LLC v. Greene’s Energy Group, LLC*, -- U.S.-- (Apr. 24, 2018) (Gorsuch, J. & Roberts, C.J., dissenting).

Patent and Copyright Exhaustion in England circa 1800, <http://ssrn.com/abstract=2905847> (Feb. 9, 2017) [51pp]

Cited in *Oil States Energy Serv., LLC v. Greene’s Energy Group, LLC*, -- U.S.-- (Apr. 24, 2018) (Gorsuch, J. & Roberts, C.J., dissenting).

Stationers v Seymour (1677), in *LANDMARK CASES IN INTELLECTUAL PROPERTY LAW* 21 (Jose Bellido ed. 2017) [38pp]

Equitable Infringement Remedies before 1800, in *RESEARCH HANDBOOK ON THE HISTORY OF COPYRIGHT LAW* (Isabella Alexander & H. Tomás Gómez-Arostegui eds. 2016) [40pp]

Copyright at Common Law in 1774, 47 CONN. L. REV. 1 (2014), <http://ssrn.com/abstract=2504221> [57pp]

Awarded the 2015 Sutherland Prize by the American Society for Legal History for the best article or book chapter on English legal history published in the prior year.

Reprinted in *THE HISTORY OF INTELLECTUAL PROPERTY LAW* (Oren Bracha ed., 2018).

A follow-up essay, which formed part of a conference on *Donaldson* and copyright history, may be found here: *A Reply to my Colleagues Regarding Donaldson v Becket*, in *WHAT IS THE POINT OF COPYRIGHT HISTORY? REFLECTIONS ON COPYRIGHT AT COMMON LAW IN 1774* BY H. TOMÁS GÓMEZ-AROSTEGUI 45 (Elena Cooper & Ronan Deazley eds. 2016). The published proceedings also include other comments: <https://zenodo.org/record/47710/files/CREATE-Working-Paper-2016-04.pdf>.

The Untold Story of the First Copyright Suit under the Statute of Anne in 1710, 25 BERKELEY TECH. L.J. 1247 (2010), <http://ssrn.com/abstract=1572177> [solicited symposium contribution] [104pp]

Cited in *Golan v. Holder*, 565 U.S. 302, 347 (2012) (Breyer & Alito, JJ., dissenting).

Prospective Compensation in Lieu of a Final Injunction in Patent and Copyright Cases, 78 FORDHAM L. REV. 1661 (2010), <http://ssrn.com/abstract=1355464> [71pp]

What History Teaches Us About Copyright Injunctions and the Inadequate-Remedy-At-Law Requirement, 81 S. CAL. L. REV. 1197 (2008), <http://ssrn.com/abstract=1101974> [84pp]

Reprinted in COPYRIGHT LAW ANTHOLOGY, 2009–2010, at 539 (Rodney Smolla ed., 2009).

Defining Private Life Under the European Convention on Human Rights by Referring to Reasonable Expectations, 35 CAL. W. INT'L L.J. 153 (2005), <http://ssrn.com/abstract=669401> [50pp]

A Comparative Fault Framework for Rule 10b-5 Direct Misrepresentation Actions, 70 S. CAL. L. REV. 1407 (1997) [52pp]

Books

RESEARCH HANDBOOK ON THE HISTORY OF COPYRIGHT LAW (co-edited with Isabella Alexander) (2016) [496pp]

A Sourcebook of Law Reports of Copyright Suits before 1800 (in progress)

An edited transcription of all known reports of copyright and printing-patent lawsuits filed before the year 1800, both reported and unreported MSS, along with associated, key court records from the National Archives. Numerous opinions of counsel on the subject of printing rights are also included. This text will also include a lengthy introduction that pools together all of the sources reproduced within.

Shorter Works

Sir Edward Coke and International Patent Exhaustion, <https://patentlyo.com/patent/2017/03/edward-international-exhaustion.html> (Patently-O Blog Mar. 27, 2017) [guest blog post]

Introduction (with Isabella Alexander), in RESEARCH HANDBOOK ON THE HISTORY OF COPYRIGHT LAW (Isabella Alexander & H. Tomás Gómez-Arostegui eds. 2016) [5pp]

What History Teaches Us About U.S. Copyright Law and Statutory Damages, 5 WIPO JOURNAL 76 (2013), <http://ssrn.com/abstract=2380396> [solicited symposium contribution] [10pp]

Copyright Law and the Public Interest in the Nineteenth Century by Isabella Alexander, Hart Publishing, 2010. Pp. xxiv + 320. Cloth \$110, 2 IP LAW BOOK REV. 11 (2011) [solicited book review] [4pp]

The Piracy Loop, Adrian Johns: *Piracy: The Intellectual Property Wars From Gutenberg to Gates* (Chicago: University of Chicago Press, 2010. Pp. 640. \$35.00), 73 REV. OF POLITICS 172 (2011) [solicited book review] [3pp]

Harald Welte, Linux, and the GPL, 7 OREGON INTELL. PROP. NEWSLETTER 19 (Winter 2006) [4pp]

Know-How, Intellectual Property, and Confidentiality Issues, in REPORT ON LEGAL ISSUES IN SME CLUSTERS (Pinsent Masons, ed., Legal-IST 2005; submitted to the European Commission)

Amicus Briefs

Brief of H. Tomás Gómez-Arostegui and Sean Bottomley as *Amici Curiae* in Support of Neither Party, *Oil States Energy Servs., LLC v. Greene's Energy Group, LLC et al.*, No. 16-712 (U.S. August 17, 2017)

Cited in *Oil States Energy Serv., LLC v. Greene's Energy Group, LLC*, -- U.S.-- (Apr. 24, 2018) (Gorsuch, J. & Roberts, C.J., dissenting).

Brief of H. Tomas Gomez-Arostegui and Tyler T. Ochoa as *Amici Curiae* in Support of Petitioners, *Golan v. Holder*, No. 10-545 (U.S. June 17, 2011)

Conferences & Other Presentations (Presented Unless Otherwise Indicated)

Copyright and the Constitution, Center for the Protection of Intellectual Property, Antonin Scalia Law School, George Mason University, April 15–16, 2021 (upcoming)

Intellectual Property and the Constitution, Hudson Institute, December 3, 2020 (participant in roundtable)

2020 Supreme Court IP Review, IIT Chicago-Kent College of Law, October 2, 2020 (panelist on *Google v. Oracle* and jury-trial rights on fair use)

The Traditional Burdens for Final Injunctions in Patent Cases c.1789 and Some Modern Implications, New York University School of Law, Conference on the Rise of Intellectual Property in the 18th and 19th Centuries, March 13–14, 2020 (moved to a weekly online format during May, June, and July 2020)

The Traditional Burdens for Final Injunctions in Patent Cases c.1789 and Some Modern Implications, Thomas Edison Innovation Fellowship Meeting, Center for the Protection of Intellectual Property, Miami, FL, January 23–24, 2020

The Traditional Burdens for Final Injunctions in Patent Cases c.1789 and Some Modern Implications, Thomas Edison Innovation Fellowship Meeting, Center for the Protection of Intellectual Property, Antonin Scalia Law School, George Mason University, September 12–13, 2019

Thomas Edison Innovation Fellowship Meeting, Center for the Protection of Intellectual Property, Scottsdale, AZ, April 18–19, 2019 (participant)

Concurrent Trademark Uses in Different Regions of the United States: Dawn Donut Revisited, Oregon State Bar CLE, Intellectual Property Section, March 6, 2019

Thomas Edison Innovation Fellowship Meeting, Center for the Protection of Intellectual Property, Coronado, CA, February 28 – March 2, 2019 (participant)

Patent Validity Litigation in 18th Century England and the Right to a Jury, American Society for Legal History Annual Meeting, University of Houston Law Center, November 8–11, 2018

Intellectual Property History Roundtable, University of Washington School of Law, 30 November 2017 (commentator)

Copyright at Common Law in 1774, CREATE Conference on Copyright History and Policy, University of Glasgow, Faculty of Law, 26–27 March 2015

Pacific Intellectual Property Scholars III Conference, University of Washington School of Law & Seattle University School of Law, 5–6 February 2015 (commentator)

The History of Patented Innovation, George Mason University School of Law, 18 September 2014 (commentator)

Copyright at Common Law in 1774, Faculty Colloquium, Lewis & Clark Law School, 16 September 2014

Copyright at Common Law before 1710 and its Modern Implications & Copyright at Common Law in 1774, Intellectual Property Colloquium, Stanford Law School, 27 February 2014

Copyright History Workshop, Stationers' Register Online Project, Merton College, University of Oxford, 3 May 2013 (participant)

Copyright at Common Law before 1710 and its Modern Implications, Legal History Workshop, University of Cambridge, Faculties of History and Law, 1 May 2013

Financial Remedies after eBay v. MercExchange: Royalty Awards in Lieu of Injunctive Relief, What's New in IP Remedies Conference, University of Cambridge, Faculty of Law, 9 March 2013

Copyright at Common Law before 1710 and its Modern Implications, Panel on Legal History, 31st Annual Congress of the International Association for the Advancement of Teaching and Research in Intellectual Property, IIT Chicago-Kent College of Law, 29 July to 1 August 2012

Copyright at Common Law before 1710 and its Modern Implications & Copyright at Common Law in 1774, Copyright History Roundtable, George Washington University Law School, 30–31 March 2012

Legal Records of English Courts before 1800: Finding and Interpreting Documents Relating to the Book Trade, Seminar, Rare Book School, University of Virginia, 2 March 2012

Copyright at Common Law before 1710 and its Modern Implications, Clay Lecture, Rare Book School, University of Virginia, 1 March 2012

Copyright at Common Law before 1710 and its Modern Implications, Faculty Workshop, King's College London, School of Law, 8 February 2012

Copyright at Common Law before 1710 and its Modern Implications & Copyright at Common Law in 1774, Works-in-Progress Workshop, George Washington University Law School, 30 January 2012

U.S. Copyright and Trademark Law: Selected Topics, Global Intellectual Property Academy: IP Rights Program for Russian Judges, George Washington University Law School, 9 November 2011

Copyright at Common Law before 1710 and its Modern Implications & Copyright at Common Law in 1774, DC Area Legal History Roundtable, George Mason University School of Law, 14 October 2011

Copyright at Common Law before 1790 and its Implications in Golan v. Holder, Roundtable on *Golan v. Holder*, Harvard Law School, 23 September 2011

Copyright at Common Law before 1710 and its Modern Implications, Twentieth British Legal History Conference, University of Cambridge, Faculty of Law, 14 July 2011

Prospective Compensation in Lieu of a Final Injunction in Patent and Copyright Cases, Oregon State Bar CLE, Intellectual Property Section, 2 March 2011

The Coming Copyright Termination Crisis, AIPLA Online CLE Seminar, 16 February 2011 (with John Tehranian)

Copyright at Common Law before 1710 and its Modern Implications, Works-in-Progress Intellectual Property Colloquium, Boston University School of Law, 12 February 2011

The Untold Story of the First Copyright Suit under the Statute of Anne in 1710, Intellectual Property Workshop, University of Michigan Law School, 21 September 2010

The Untold Story of the First Copyright Suit under the Statute of Anne in 1710, British Literary and Artistic Copyright Association, London, England, 13 May 2010

The Untold Story of the First Copyright Suit under the Statute of Anne in 1710, Conference on the 300th Anniversary of the Statute of Anne, University of California, Berkeley School of Law, 9–10 April 2010

The Untold Story of the First Copyright Suit under the Statute of Anne in 1710, Faculty Colloquium, Lewis & Clark Law School, 26 January 2010

Intellectual Property Remedies, Business Law Fall Forum, Lewis & Clark Law School, 2 October 2009 (convener and panel moderator)

Prospective Compensation in Lieu of a Final Injunction in Patent and Copyright Cases, 62nd Annual Meeting, Southeastern Association of Law Schools, IP Remedies Panel, 4 August 2009 (also convened the panel)

Conference on the 100th Anniversary of the 1909 Copyright Act, Santa Clara University, School of Law, 30 April 2009 (panel moderator)

A History of English Copyright and its Enforcement before the Year 1800, Presentation for the Coke Society, Paul L. Boley Law Library, 7 April 2009

Prospective Compensation in Lieu of a Final Injunction in Patent and Copyright Cases, Northwest Junior Faculty Conference, Willamette University College of Law, 4 March 2009

A History of English Copyright Law and its Enforcement before the Year 1800, Presentation for Judge Pierre N. Leval, Kitagawa/Johnson-Laird Dinner, 11 February 2009

Prospective Compensation in Lieu of a Final Injunction in Patent and Copyright Cases, Faculty Colloquium, Lewis & Clark Law School, 4 November 2008

Information Privacy—Statutory Claims Under the CFAA, Wiretap Act, and SCA, Johnson-Laird, Inc., 22 August 2008

2008 Privacy Law Scholars Conference, George Washington University Law School, 12–13 June 2008 (discussion leader)

Injunctions in Intellectual Property Cases After eBay v. MercExchange, Oregon State Bar CLE, Computer and Internet Law Section, 17 April 2008

Intellectual Property Law: A Year in Review—International Developments, Oregon State Bar CLE, Intellectual Property Section, 29 February 2008

Information Privacy—Statutory Claims Under the CFAA, Wiretap Act, and SCA, Oregon State Bar CLE, Computer and Internet Law Section, 27 September 2007

What History Can Teach Us About the Inadequate-Remedy-At-Law Requirement and Copyright Injunctions, Seventh Annual IP Scholars Conference, DePaul University, College of Law, 10 August 2007

What History Can Teach Us About the Inadequate-Remedy-At-Law Requirement and Copyright Injunctions, Faculty Colloquium, Lewis & Clark Law School, 24 April 2007

What History Can Teach Us About the Inadequate-Remedy-At-Law Requirement and Copyright Injunctions, Northwest Junior Faculty Conference, Willamette University College of Law, 26 October 2006

Hate Speech: An Analysis of the Additional Protocol to the Convention on Cybercrime, University of Oslo, NRCCL, 22 March 2004

Data Protection Pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms: Recent Case Law, University of Oslo, NRCCL, 1 March 2004

Jurisdictional and Choice-of-Law Issues in International Intellectual Property Commerce, University of Oslo, NRCCL, 7 November 2003, with Helge Kauert

SELECTED LAW SCHOOL SERVICE

Curriculum Committee (2015–2016, 2017–Present)
Business Law Committee (2006–Present)
Employment Committee (2016–2017)
Johnson-Laird & Kitagawa Scholarship Committee (2007–2016)
Judicial Clerkship Placement Committee (2008–2015), Chair (2012–2015)
Lewis & Clark Law Review, Faculty Advisor (2008–2017)
L&C College-Wide Institutional Review Board (2015)
AEP Admissions Committee (Spring '07, '08, '10, '11, '13)
Diversity Committee (Fall '08)
Faculty Appointments Committee (2008–2009)
L&C College-Wide Diversity Committee (2007–2010)

AFFILIATIONS AND OTHER SERVICE

Member, State Bar of California (active)
Member, American Society for Legal History
Member, ASLH Advisory Committee on the Cromwell Prizes—Articles (2018–Present)
Member, Bibliographical Society
Member, Selden Society
Life Member, Friends of the National Archives of the United Kingdom
Exec. Comm. Member, Intellectual Property Section of the Oregon State Bar (2008–2009, 2016–Present)
Referee, The Journal of Legal History

Court Admissions:

Supreme Court of the United States, March 2011
United States Court of Appeals for the Tenth Circuit, October 2002
United States Court of Appeals for the Ninth Circuit, January 2001
United States District Court for the Central District of California, July 2000
California State Courts, January 2000