

## COLORADO TECHNOLOGY LAW JOURNAL

University of Colorado Law School  
320-L Wolf Law Building, 401 UCB, Boulder, CO 80309-0401  
1.303.735.1032 • [ctlj@colorado.edu](mailto:ctlj@colorado.edu) • <http://ctlj.colorado.edu>

POSTMASTER: Please send address changes to the address  
above.

The Colorado Technology Law Journal (ISSN 2374-9032) is  
an association of students sponsored by University of Colorado  
Law School and the Silicon Flatirons Center for Law, Technology,  
and Entrepreneurship.

### *Subscriptions*

Issues are published semiannually. Domestic volume  
subscriptions are available for \$50.00. City of Boulder subscribers  
add \$3.74 sales tax. Boulder County subscribers outside the City  
of Boulder add \$2.21 sales tax. Metro Denver subscribers outside  
of Boulder County add \$1.85 sales tax. Colorado subscribers  
outside of Metro Denver add \$1.31 sales tax. International volume  
subscriptions are available for \$55.00. Inquiries concerning  
ongoing subscriptions or obtaining an individual issue should be  
directed to [ctlj@colorado.edu](mailto:ctlj@colorado.edu) or by mail to the address above. Back  
issues in sets, volumes, or single issues may be obtained from:

William S. Hein & Co., Inc.  
1285 Main Street, Buffalo, NY 14209  
p: 1.716.882.2600 • <http://www.wshein.com>  
<http://heinonline.org> (for back issues in electronic format)

Cite as: 15 COLO. TECH. L.J. \_\_ (2016).

© 2016, Colorado Technology Law Journal



**COLORADO TECHNOLOGY LAW JOURNAL**

*Volume 15*

*Issue 1*

**EXECUTIVE BOARD**

***Editor-in-Chief***  
ARIEL DIAMOND

***Executive Editor***  
LAUREL WITT

***Managing Editor***  
KELTON SHOCKEY

***Lead Production Editor***  
COLTER DONAHUE

***Lead Articles Editor***  
ABIGAIL RINGS

***Lead Student Note Editor***  
KYRIAKI COUNCIL

***Production Editor***  
KELLY HUGHES

***Digital Resources Editor***  
AYSHAN IBRAHIM

**EDITORIAL STAFF**

<b><i>Student Note Editors</i></b>	<b><i>Articles Editors</i></b>	<b><i>Symposium Editors</i></b>
JOSH KOHLER	DERIK GOATSON	SEAN BELCHER
BRYAN RECH	CHRIS IVY	LINDSEY KNAPTON
	BRADLEY SANDS	
	ASHTON SEIP	
	KRISTINE YATES	

**MEMBERS**

JONATHAN BAIR	EMILY HALVORSEN	DARIAN MENDEZ
JENNA BARANKO	BENJAMIN HAND-BENDER	HARRISON MEYERS
INGRID BAUDLER	KARYN KESSELRING	TYLER PARK
JOHN CANNAFAX	ALEX KIMATA	JOHN RAGLAND
EDYAEAL CASPERALTA	MORGAN LIPHART	DARDOH SOWE
ELIZABETH FIELD	MOQI LIU	DAIN SUNG
AARON FRANSUA	ANDREW MANLEY	EILIF VANDERKOLK
JONATHAN GENEUS	MAX MARTINO	JODI WALLACE
ALLISON GREENE	MALEA MCCKEOWN	JEFFREY WESTLING

**FACULTY ADVISORS**

BLAKE REID

**OFFICE MANAGER**

JACKIE KOEHN



THE UNIVERSITY OF COLORADO LAW SCHOOL

FACULTY, 2016–17

***Deans***

S. JAMES ANAYA, *Dean, Charles Inglis Thompson Professor of Law*. B.A., University of New Mexico; J.D., Harvard Law School.

ERIK GERDING, *Associate Dean for Academic Affairs and Professor of Law*. A.B., Duke University; J.D., Harvard University.

AMY GRIFFIN, *Associate Dean for Faculty Development and Legal Writing Professor and Director of Academic and Legal Writing Support*. B.A., Boston College; J.D., University of California, Berkeley.

KRISTEN A. CARPENTER, *Associate Dean for Research (Fall 2015) and Professor of Law*. B.A., Dartmouth College; J.D., Harvard Law School.

WHITING LEARY, *Senior Assistant Dean for Students*. B.A., Williams College; J.D., University of Colorado.

MARCI FULTON, *Assistant Dean for Outreach, Engagement, and Alumni Relations*. B.A., University of Colorado; J.D., University of Colorado.

KRISTINE M. JACKSON, *Assistant Dean for Admissions and Financial Aid*. B.S., University of North Carolina; J.D., George Mason University.

TODD ROGERS, *Assistant Dean for Career Development*. B.S., Trinity University; J.D., University of Texas.

MARY BETH SEARLES, *Assistant Dean for Career Development*. B.A., Northwestern University; J.D., University of Colorado.

***Emeritus Faculty***

NORMAN F. AARONSON, *Clinical Professor Emeritus, Legal Aid and Defender Program*. A.B., Brandeis University; J.D., Boston University.

HAROLD H. BRUFF, *Nicholas Rosenbaum Professor of Law*. B.A., Williams College; J.D., Harvard Law School.

EMILY M. CALHOUN, *Professor Emeritus*. B.A., M.A., Texas Tech University; J.D., University of Texas.

JAMES N. CORBRIDGE, JR., *Professor Emeritus*. A.B., Brown University; LL.B., Yale University.

TED J. FIFLIS, *Professor Emeritus*. B.S., Northwestern University; LL.B., Harvard University.

H. PATRICK FURMAN, *Clinical Professor Emeritus, Legal Aid and Defender Program, and Director of Clinical Programs*. B.A., J.D., University of Colorado.

WAYNE GAZUR, *Associate Professor of Law*. B.S., University of Wyoming; J.D., University of Colorado; LL.M., University of Denver.

DAVID S. HILL, *Professor Emeritus*. B.S., J.D., University of Nebraska.

J. DENNIS HYNES, *Professor Emeritus*. B.A., LL.B., University of Colorado.

HOWARD C. KLEMME, *Professor Emeritus*. B.A., LL.B., University of Colorado; LL.M., Yale University.

WILLIAM T. PIZZI, *Professor Emeritus*. A.B., Holy Cross College; J.D. Harvard University; M.A. University of Massachusetts.

ARTHUR H. TRAVERS, JR., *Professor Emeritus*. B.A., Grinnell College; LL.B., Harvard University.

MICHAEL J. WAGGONER, *Professor Emeritus*. A.B., Stanford University; LL.B. Harvard University.

MARIANNE WESSON, *Professor of Law and Wolf Nichol Fellow*. A.B., Vassar College; J.D., University of Texas.

***Tenured and Tenure-Track Faculty***

J. BRAD BERNTHAL, *Associate Professor of Law, Faculty Director of the Silicon Flatirons Entrepreneurship Initiative, and Director of LL.M Program in Entrepreneurial Law*. B.A., University of Kansas; J.D., University of Colorado.

FREDERIC BLOOM, *Professor of Law*. B.A., Washington University in St. Louis; J.D., Stanford University.

WILLIAM BOYD, *Professor of Law and Director of the Governor's Climate and Forests Task Force Project*. B.A., University of North Carolina, Chapel Hill; J.D., Stanford University; Ph.D., University of California, Berkeley.

PAUL F. CAMPOS, *Professor of Law*. A.B., M.A., J.D., University of Michigan.

DEBORAH J. CANTRELL, *Associate Professor of Law and Director of Clinical Programs*. B.A., Smith College; M.A., University of California, Los Angeles; J.D., University of Southern California.

MING CHEN, *Associate Professor of Law*. B.A., Harvard University; J.D., New York University; Ph.D., University of California, Berkeley.

RICHARD B. COLLINS, *Professor of Law*. B.A., Yale College; LL.B., Harvard University.

JUSTIN DESAUTELS-STEIN, *Associate Professor of Law*. B.A., University of North Carolina, Asheville; J.D., University of North Carolina, Chapel Hill; LL.M., Harvard University.

KRISTELIA GARCIA, *Associate Professor of Law, Faculty Director of the Content Initiative at the Silicon Flatirons Center for Law*. B.A., Columbia University; J.D., Yale University.

AYA GRUBER, *Professor of Law*. B.A., University of California at Berkeley; J.D., Harvard University.

LAKSHMAN D. GURUSWAMY, *Nicholas Doman Professor of International Environmental Law*. LL.B., Sri Lanka; Ph.D., University of Durham, U.K.

MELISSA HART, *Professor of Law and Director of the Byron R. White Center for the Study of American Constitutional Law*. B.A., Harvard-Radcliffe College; J.D., Harvard University.

DAVID HASEN, *Associate Professor of Law*. B.A., Reed College; Ph.D. Harvard University; J.D. Yale University.

JENNIFER S. HENDRICKS, *Professor of Law and Co-Director of the Juvenile and Family Law Program*. B.A., Swarthmore College, J.D., Harvard University.

PETER HUANG, *Professor of Law and DeMuth Chair*. A.B., Princeton University; S.M., Harvard University; J.D., Stanford University; Ph.D., Harvard University.

SHARON JACOBS, *Associate Professor of Law*. B.M., Cleveland Institute of Music, M.M., Julliard/Columbia University Exchange Program; J.D. Harvard Law School.

SARAH A. KRAKOFF, *Professor of Law and Schaden Chair in Experiential Learning*. B.A., Yale University; LL.B., University of California, Berkeley.

ALEXIA BRUNET MARKS, *Associate Professor of Law*. B.A., Colgate University; M.S., Purdue University; Ph.D., Purdue University; J.D., Northwestern University.

MARK LOEWENSTEIN, *Monfort Professor of Commercial Law*. A.B., University of Illinois; J.D., University of Illinois.

DAYNA BOWEN MATTHEW, *Professor of Law*. A.B., Harvard-Radcliffe College; J.D., University of Virginia.

SCOTT A. MOSS, *Professor of Law*. B.A., M.A., Stanford University; J.D., Harvard University.

CHRISTOPHER B. MUELLER, *Henry S. Lindsley Professor of Procedure and Advocacy*. A.B., Haverford College; J.D., University of California, Berkeley.

ROBERT F. NAGEL, *Ira C. Rothgerber Professor of Constitutional Law*. B.A., Swarthmore College; J.D., Yale University.

HELEN NORTON, *Professor of Law*. B.A., Stanford University; J.D., University of California, Berkeley.

SCOTT R. PEPPET, *Professor of Law*. B.A., Cornell University; J.D., Harvard University.

CAROLYN B. RAMSEY, *Professor of Law*. B.A., University of California, Irvine; A.M., J.D., Stanford University.

PIERRE J. SCHLAG, *University's Distinguished Professor and Byron White Professor of Constitutional Law*. B.A., Yale University; J.D., University of California, Los Angeles.

ANDREW SCHWARTZ, *Associate Professor of Law*. Sc.B., Brown University; J.D., Columbia University.

ANNA SPAIN, *Associate Professor of Law*. B.A., Denison University; J.D., Harvard University.

SLOAN SPECK, *Associate Professor of Law*. B.A., Rice University; J.D., University of Chicago Law School; L.L.M., New York University School of Law.

MARK SQUILLACE, *Professor of Law*. B.S., Michigan State University; J.D., University of Utah.

HARRY SURDEN, *Associate Professor of Law*. B.A., Cornell University; J.D., Stanford University.

PHILIP J. WEISER, *Hatfield Professor of Law and Telecommunications, Dean Emeritus, and Executive Director and of the Silicon Flatirons Center for Law Technology, and Entrepreneurship*. B.A., Swarthmore College; J.D., New York University.

AHMED WHITE, *Professor of Law*. B.A., Southern University and A&M College; J.D., Yale University.

CHARLES F. WILKINSON, *University's Distinguished Professor and Moses Lasky Professor of Law*. B.A., Denison University; LL.B., Stanford University.

### ***Clinical Faculty***

DEBORAH J. CANTRELL, *Associate Professor of Law and Director of Clinical Programs*. B.A., Smith College; M.A., University of California, Los Angeles; J.D., University of Southern California.

VIOLETA CHAPIN, *Associate Clinical Professor of Law*. B.A., Columbia College; J.D., New York University.

ANN ENGLAND, *Clinical Professor, Legal Aid and Defender Program*. B.A., University of Michigan; J.D., University of Denver.

CARLA FREDERICKS, *Associate Clinical Professor and Co-Director of the American Indian Law Program*. B.A., University of Colorado; J.D., Columbia Law School.

AUDREY HUANG, *Associate Professor of Law and Director of the Getches-Green Natural Resources, Energy and Environmental Law Clinic*. B.A., Johns Hopkins University; J.D., University of Southern California.

BLAKE REID, *Assistant Clinical Professor*. B.A., University of Colorado; J.D., University of Colorado.

COLENE ROBINSON, *Clinical Professor, Juvenile and Family Law*. B.A., Valparaiso University; J.D., Loyola University School of Law, Chicago.

***Legal Writing and Appellate Advocacy Faculty***

- AMY BAUER, *Legal Writing Professor*. B.A., Duke University; J.D., William & Mary School of Law.
- TERESA BRUCE, *Visiting Faculty*. B.S., Colorado State University; J.D., Cornell Law School.
- AMY GRIFFIN, *Legal Writing Professor and Director of Academic and Legal Writing Support*. B.A. Boston College; J.D. University of California, Berkeley.
- MEGAN HALL, *Visiting Faculty*. B.A., Colorado State University; J.D., University of Colorado.
- DEREK H. KIERNAN-JOHNSON, *Legal Writing Professor*. A.B., Princeton University; J.D., University of Michigan.
- NATALIE MACK, *Legal Writing Professor*. B.S., University of South Carolina; J.D., University of Colorado.
- GABRIELLE M. STAFFORD, *Legal Writing Professor*. B.A., University of Pennsylvania; J.D., Boston University.
- TODD M. STAFFORD, *Legal Writing Professor*. B.A., Southern Methodist University; J.D., Duke University.

***Law Library Faculty***

- ERIK BECK, *Digital Librarian. Digital Services Librarian*. B.A., University of Wisconsin; M.S.I.S., University of Texas.
- GEORGIA K. BRISCOE, *Associate Director and Head of Technical Services*. B.S., Washington State University; M.A., University of San Diego; M.L.S., University of Michigan.
- NICKHOLAS HARRELL, *Student Services and Outreach Librarian*. B.B.A. Temple University; J.D. Lewis & Clark; M.L.I.S. University of Washington.
- ROBERT LINZ, *Head of Public Services and Associate Director of Law Library*. B.A., Wake Forest University; J.D., University of Florida; M.L.I.S., Florida State University.
- SUSAN NEVELOW MART, *Associate Professor and Director of the Law Library*. B.A., University of California, Santa Cruz; J.D., University of California, Berkeley; M.L.I.S., San Jose State University.
- JOAN POLICASTRI, *Collection Services and Research Librarian*. B.A., University of Colorado, Denver; M.A., University of Colorado, Denver; M.A., University of Denver; Certificate, Denver Paralegal Institute.
- LISA SCHULTZ, *Instructional Services Librarian*. B.A., University of Nebraska-Lincoln; J.D., University of Nebraska-Lincoln; M.L.S., University of Missouri-Columbia.
- KAREN SELDEN, *Catalog Librarian*. B.S., Pennsylvania State University; M.L.S., Simmons College.
- JANE E. THOMPSON, *Head of Faculty Services*. B.A., University of Missouri; M.A., J.D., University of Denver.

## FROM THE EDITOR

It is my pleasure to introduce Volume 15, Issue 1 of the Colorado Technology Law Journal. This Issue features discussions, articles, and a keynote address from the 16th annual Digital Broadband Migration Conference, “The Evolving Industry Structure of the Digital Broadband Landscape,” which took place at the University of Colorado Law School on January 31, 2016.

We would like to thank each of the contributing authors who braved the snowy, Colorado weather last January to attend our conference and continued to bring enthusiasm to the editing process throughout the year. We are extremely grateful for their dedication to this Issue and making the Colorado Technology Law Journal one of the premier technology law journals in the nation.

This symposium Issue would not be possible without the leadership and friendship of the Silicon Flatirons staff and University of Colorado Law School faculty. I would like to thank Anna Noschese and Sara Schnittgrund for their enthusiasm and willingness to work with our symposium editors to make our annual issue possible. Lastly, thank you to Phil Weiser, Blake Reid, Harry Surden, and Kristelia Garcia for their limitless dedication to this Journal and the success of its members.

From all of us at the Colorado Technology Law Journal, we hope you enjoy Volume 15, Issue 1. We look forward to bringing you Volume 15, Issue 2 this spring.

*Ariel Diamond*  
*Editor-in-Chief, Volume 15*

## CONTENTS

### KEYNOTE ADDRESS

KEYNOTE ADDRESS BY THE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION AT THE DEPARTMENT OF COMMERCE LAWRENCE E. STRICKLING .....	1-12
---	------

### DISCUSSIONS AND ARTICLES

CLOSING FIRESIDE CHAT WITH THE ASSISTANT ATTORNEY GENERAL FOR THE U.S. DEPARTMENT OF JUSTICE ANTITRUST DIVISION WILLIAM BAER AND PHILIP J. WEISER .....	13-25
THE ROLE OF DESIGN CHOICE IN INTELLECTUAL PROPERTY AND ANTITRUST LAW STACEY DOGAN .....	27-62
ZERO-RATING BROADBAND DATA: EQUALITY AND FREE SPEECH AT THE NETWORK'S OTHER EDGE ELLEN P. GOODMAN .....	63-92
WHAT THINKING ABOUT ANTITRUST LAW CAN TELL US ABOUT NET NEUTRALITY A. DOUGLAS MELAMED AND ANDREW W. CHANG .....	93-117
ANTITRUST OVER NET NEUTRALITY: WHY WE SHOULD TAKE COMPETITION IN BROADBAND SERIOUSLY HON. MAUREEN K. OHLHAUSEN .....	119-149

### STUDENT NOTES

THE SKY IS THE LIMIT: FAA REGULATIONS AND THE FUTURE OF DRONES JOSHUA KOHLER .....	151-179
ORGANIZATIONAL DOXING: DISASTER ON THE DOORSTEP COLIN J.A. OLDBERG .....	181-206
THE BATTLE FOR ELECTRONIC HEALTH RECORD FINANCING: THE NEXT EPOCH IN THE STORY OF THE AMERICAN HEALTH CARE SYSTEM ABIGAIL RINGS .....	207-232
SAVE OUR SANDBOX: A PROSPECTIVE APPROACH TO BIG PLAYER PARTICIPATION IN THE UNLICENSED SPECTRUM SPACE SAVANNAH P. SCHAEFER .....	233-256