

BRUCE E. BOYDEN

MARQUETTE UNIVERSITY LAW SCHOOL
P.O. Box 1881
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EXPERIENCE

Marquette University Law School, Milwaukee, WI

Associate Professor, 2014–present; Assistant Professor, 2007–2014

Washington & Lee University School of Law, Lexington, VA

Visiting Assistant Professor, Spring 2006–2007; Adjunct Professor, Spring 2003 & 2004

Michigan State University College of Law, East Lansing, MI

Visiting Assistant Professor, Fall 2005

Proskauer Rose LLP, New York, NY & Washington, DC

Litigation Associate, 1997-2005

EDUCATION

Yale Law School, J.D. 1997

Yale Law Journal, Notes Editor & Admissions Committee

Yale Journal of Law & Feminism

Director, Yale Legal History Forum Student Presentation Series

Northwestern University, M.A. (History) 1993

Thesis: *The Meaning of Terror: The Ku Klux Klan in South Carolina, 1868-71*

Teaching Assistant, 1992-93

University of Arkansas, B.A. summa cum laude (History & Philosophy) 1991

Sturgis Fellow, 1987-91

Studied at Corpus Christi College, Cambridge University, 1989-90

RESEARCH INTERESTS

The history of modern copyright doctrine

Copyright and new technologies

Norms in electronic communications

PUBLICATIONS

Generative AI and IP Under US Law, in [THE CAMBRIDGE HANDBOOK OF GENERATIVE AI AND THE LAW](#) (Mimi Zou et al. eds., forthcoming 2025)

The Grapes of Roth, 99 WASH. L. REV. 1093 (2024)

The Game, the Players, and the Board, 109 IOWA L. REV. ONLINE 105 (2024)

Daly v. Palmer, or the Melodramatic Origins of the Ordinary Observer, 68 SYRACUSE L. REV. 147 (2018)

Emergent Works, 39 COLUM. J.L. & ARTS 377 (2016)

Aereo and the Problem of Machine Volition, 2015 MICH. ST. L. REV. 485 (2015)

Privacy in Electronic Communications, in PROSKAUER ON PRIVACY 6-1 to 6-135 (Kristen J.

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Mathews ed. 2013) (treatise chapter; updated through Aug. 2021)
[Regulating at the End of Privacy](#), 2013 U. CHI. LEGAL F. 173
Copyright's Middle Ground: The Interaction of Players and Video Games, in THE GAME BEHIND THE VIDEO GAME: BUSINESS, REGULATION, AND SOCIETY IN THE GAMING INDUSTRY 188-96 (2012)
[Can a Computer Intercept Your Email?](#), 34 CARDOZO L. REV. 669-718 (2012)
[Oversharing: Facebook Discovery and the Unbearable Sameness of Internet Law](#), 65 ARK. L. REV. 39-73 (2012)
[Constitutional Safety Valve: The Privileges or Immunities Clause and Status Regimes in a Federalist System](#), 62 ALA. L. REV. 111-89 (2011)
[Games and Other Uncopyrightable Systems](#), 18 GEO. MASON L. REV. 439-80 (2011); selected for republication in ENTERTAINMENT, PUBLISHING AND THE ARTS HANDBOOK (Karen B. Tripp ed. 2011)
Book Note, [Freedom to Offend](#), 105 YALE L.J. 1415-20 (1996)

WORKS IN PROGRESS

Mere Selection

OTHER WRITINGS

Amicus Briefs

Brief of Amici Curiae Intellectual Property Law Professors in Support of Plaintiffs-Appellants and Urging Reversal, *Viacom Int'l, Inc. v. YouTube, Inc. and Football Ass'n Premier League, Ltd. v. YouTube, Inc.*, Nos. 10-3270-cv & 10-3342-cv (2d Cir. filed Dec. 10, 2010)

Legal Practice Publications

[Confronting the Wavicles of Mass Media](#), MARQUETTE LAWYER (Summer 2023)
Congress Sends the Microsoft Ireland Case to the CLOUD, 2 PLI CURRENT 1 (2018)
Do Twitter's Computers Spy on Users?, DAILY JOURNAL (Sept. 29, 2015)
Stewart Prosecution Imperils Business Civil Liberties, LEGAL BACKGROUNDER (Wash. Legal Found., Wash., DC), Oct. 3, 2003, at 1-5 (with Warren Dennis)
3 Steps to Pulling the Plug on a Phony Bank Web Site, AM. BANKER, June 27, 2003, at 9 (with Warren Dennis)

Selected Blog Posts

[Alan Latman and the Modern Fair Use Doctrine](#), Marquette University Law School Faculty Blog (Oct. 13, 2022)
[The Surprisingly Confused History of Fair Use: Is It a Limit or a Defense or Both?](#), Marquette University Law School Faculty Blog (Oct. 9, 2022)
[The Stakes in Andy Warhol Foundation v. Goldsmith](#), Marquette University Law School

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Faculty Blog (Oct. 3, 2022)

[No Exit](#), Marquette University Law School Faculty Blog (Jan. 10, 2022)

[The Last Bastion](#), Marquette University Law School Faculty Blog (Jan. 6, 2022)

[Democracy's Self-Perpetuating Illusion](#), Marquette University Law School Faculty Blog (July 9, 2021)

[The Legal Process Sea-Change](#), Marquette University Law School Faculty Blog (Apr. 17, 2018)

[Learned Hand: You're Reading Him Wrong](#), Marquette University Law School Faculty Blog (Apr. 13, 2018)

[Copyright's Substantial Confusion](#), Marquette University Law School Faculty Blog (Apr. 12, 2018)

[Mapping Out the Copyright Semicommons](#), Marquette University Law School Faculty Blog (Apr. 10, 2015)

[The 2015 Nies Lecture: IP as Semicommons](#), Marquette University Law School Faculty Blog (Apr. 9, 2015)

[The 2015 Nies Lecture: What Is "Intellectual Property," Exactly, and How Does It Relate to Water Law?](#), Marquette University Law School Faculty Blog (Apr. 7, 2015)

[The Supreme Court Considers Google Street View](#), Marquette University Law School Faculty Blog (June 30, 2014)

[Google Files Cert. Petition in Street View Case](#), Marquette University Law School Faculty Blog (Apr. 1, 2014)

[My Official Super Bowl Television Post](#), Marquette University Law School Faculty Blog (Feb. 1, 2014)

[Google Calls in the Cavalry in the Street View Case](#), Marquette University Law School Faculty Blog (Oct. 2, 2013)

[Why Google's Wi-Spy Argument Is Stronger Than It First Appears](#), Marquette University Law School Faculty Blog (Aug. 19, 2013)

[Seventh Circuit to Form 19: Drop Dead!](#), Marquette University Law School Faculty Blog (Aug. 30, 2012)

[Peters v. West: Three Strikes](#), Marquette University Law School Faculty Blog (Aug. 23, 2012)

[There Is No Joy in Mudville](#), Marquette University Law School Faculty Blog (Aug. 22, 2012)

[Unsolved Mysteries of Copyright Law, 1963 Edition](#), Marquette University Law School Faculty Blog (June 28, 2012)

[Speech by Proxy](#), Marquette University Law School Faculty Blog (June 25, 2012)

[Do Video Games Dream of Electric Speech?](#), Marquette University Law School Faculty Blog (June 22, 2012)

[Son of SOPA](#), Marquette University Law School Faculty Blog (Dec. 15, 2011)

[Two Flaws in the SOPA](#), Marquette University Law School Faculty Blog (Nov. 28, 2011)

[What's Up With SOPA?](#), Marquette University Law School Faculty Blog (Nov. 17, 2011)

[One Public Domain to Rule Them All](#), Marquette University Law School Faculty Blog (Oct. 5,

2011)

[*The Persistence of Legal Error*](#), Marquette University Law School Faculty Blog (Feb. 15, 2011)

[*Can You Be Forced to Turn Over Your Social Network Passwords in a Civil Case?*](#), Marquette University Law School Faculty Blog (Sept. 28, 2010)

[*Violence and Social Order*](#), Marquette University Law School Faculty Blog (Apr. 14, 2010)

[*What We Talk About When We Talk About Editing*](#), Marquette University Law School Faculty Blog (Jan. 4, 2010)

[*Harry Potter and the Unauthorized Sequel*](#), Marquette University Law School Faculty Blog (Aug. 19, 2009)

[*The Windmill's Reply*](#), Marquette University Law School Faculty Blog (Aug. 17, 2009)

[*The Obama "Hope" Poster Case—Mannie Garcia Weighs In*](#), Marquette University Law School Faculty Blog (July 13, 2009)

[*The Obama "Hope" Poster Case—What's a "Visual Reference"?*](#), Marquette University Law School Faculty Blog (Mar. 12, 2009)

[*The Obama "Hope" Poster Case—AP Strikes Back*](#), Marquette University Law School Faculty Blog (Mar. 11, 2009)

[*The Obama "Hope" Poster Case—How Was the Poster Created?*](#), Marquette University Law School Faculty Blog (Feb. 27, 2009)

[*The Obama "Hope" Poster Case—A Copyright Catch-22?*](#), Marquette University Law School Faculty Blog (Feb. 14, 2009)

[*The Obama "Hope" Poster Case—Who Owns the Photo?*](#), Marquette University Law School Faculty Blog (Feb. 12, 2009)

[*The Obama "Hope" Poster Case—Why New York?*](#), Marquette University Law School Faculty Blog (Feb. 11, 2009)

[*A Reminder: You Can't Subpoena Non-Party ISPs for Emails in Civil Suits*](#), Marquette University Law School Faculty Blog (Jan. 9, 2009)

[*Thoughts on the Scrabulous Lawsuit, Part IV: A Theory of Copyright and Games*](#), Prawfsblawg (Aug. 6, 2008)

[*Thoughts on the Scrabulous Lawsuit, Part III: The Question of the Copyrightability of Games*](#), Prawfsblawg (Aug. 5, 2008)

[*Thoughts on the Scrabulous Lawsuit, Part II: The Mystery of Alfred Mosher Butts*](#), Prawfsblawg (Aug. 4, 2008)

[*Thoughts on the Scrabulous Lawsuit, Part I: The Complaint*](#), Prawfsblawg (Aug. 1, 2008)

[*The Constitution as Ritual*](#), Concurring Opinions (Mar. 16, 2008)

[*Viacom v. YouTube*](#), Prawfsblawg (Mar. 15, 2007)

[*Video Games as Art?*](#), Concurring Opinions (July 18, 2006)

[*Cyberspace as Marchland*](#), Concurring Opinions (July 11, 2006)

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SELECTED PRESENTATIONS

- Paper presentation, "The Grapes of Roth," *Ninth Columbia-Penn Copyright Scholarship Roundtable*, University of Pennsylvania Carey School of Law, May 10, 2024
- Paper presentation, "Mere Selection," *Works in Progress in IP 2024*, Santa Clara University School of Law, Feb. 3, 2024
- Presentation, "Recent Developments in Copyright Law," Marquette University Law School CLE, Green Bay, WI, June 12, 2023
- Presentation, "ChatGPT: Pandora's Box or Box of Chocolates?," *University of Richmond's 16th Annual Evil Twins Debate*, Suffolk University Law School, Boston, MA, Feb. 3, 2023
- Presentation, "Intellectual Property: The Recorded Classroom," *Association of American Law Schools Annual Meeting*, San Diego, CA, Jan. 4, 2023
- Panelist, "Campus Conversations on Data, Ethics, and Society," Center for Data, Ethics, and Society, Marquette University, Apr. 4, 2022
- Presentation, "'Who's at the Front Door, HAL?' Video Doorbells and the Legal Implications of Distributed Surveillance," *Wisconsin Justice Initiative Virtual Salon*, Jan. 19, 2022
- Presentation, "Fair Use After Google v. Oracle," *Wisconsin Bar IP Academy*, Wisconsin Bar IP & Technology Law Section, Sept. 24, 2021 (online)
- Paper Presentation, "The Enduring Appeal of 'Total Concept and Feel,'" *Intellectual Property Scholars Conference*, Cardozo School of Law, New York, NY, Aug. 1, 2021 (online)
- Panelist, *Section 230 & Potential Reforms to Protect Free Speech in the Internet Era*, Marquette University Law School Federalist Society, Mar. 23, 2021 (online)
- Presentation, "The Ring Doorbell and the Legal Implications of Distributed Surveillance," *MBA Law & Technology Conference*, Milwaukee Bar Association, Milwaukee, WI, Nov. 13, 2020 (online)
- Panelist, "Regulations and Compliance," *Do Your Part, #BeCyberSmart*, Marquette University Center for Cyber Security Awareness and Cyber Defense, Milwaukee, WI, Oct. 9, 2020 (online)
- Presentation, "Recent Copyright Infringement Cases in the Seventh Circuit," *WIPLA Monthly Meeting*, Wisconsin Intellectual Property Law Association, Milwaukee, WI, June 18, 2020 (online)
- Paper presentation, "The Tar Pit of Substantial Similarity," *Notre Dame Law School Faculty Workshop*, Notre Dame, IN, Feb. 21, 2020
- Paper presentation, "Substantial Similarity, From Equity to Legal Process," *Eighth Annual IP Scholars' Roundtable*, UNH Franklin Pierce School of Law, Concord, NH, Oct. 11, 2019
- Paper presentation, "Substantial Similarity, From Equity to Legal Process," *Intellectual Property Scholars Conference*, DePaul University College of Law, Chicago, IL, Aug. 9, 2019
- Presentation, "Emergent Authorship," *Artificial Intelligence: Intellectual Property Policy Considerations*, U.S. Patent & Trademark Office, Alexandria, VA, Jan. 31, 2019
- Presentation, "Copyright and the Collapse of Two Spheres," *IP for the Next Generation of*

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- Technology*, Center for the Protection of Intellectual Property, Arlington, VA, Oct. 12, 2018
- Paper presentation, "*Daly v. Palmer*, or Snidely Whiplash Has His Revenge," *Forgotten IP Cases*, *Syracuse Law Review Symposium*, Washington, DC, Apr. 22, 2017
- Commenter on Jacques de Werra, "Two Challenges of Global Intellectual Property Licensing at the Interface Between Contract and Property," *Harvard Private Law & IP Conference*, Harvard Law School, Cambridge, MA, Mar. 11, 2016
- Paper presentation, "Computer-Mediated Authorship," *Kernochan Center Annual Symposium: Copyright Outside the Box*, Columbia Law School, New York, NY, Oct. 2, 2015
- Presentation, "Copyright and Original Authorship," *Kernochan Center IP Speaker Series*, Columbia Law School, New York, NY, Apr. 21, 2015
- Paper presentation, "Aereo and the Problem of Machine Volition," *Public Domain(s): Law, Generating Knowledge, and Furthering Innovation in the Information Economy*, Michigan State University College of Law, East Lansing, MI, Oct. 2, 2014
- Presentation, "The Game in the Machine: Copyright in the Middle Ground Between Players and Video Games," University of Chicago Law School Law & Technology Society, Chicago, IL, Feb. 6, 2013
- Paper presentation, "Regulating at the End of Privacy," *Frontiers of Consumer Protection*, *University of Chicago Legal Forum Symposium*, Chicago, IL, Nov. 2, 2012
- Paper presentation, "Facebook and the Unbearable Sameness of Internet Law," *Facebook and the Law*, *Arkansas Law Review Symposium*, Fayetteville, AR, Nov. 4, 2011
- Invited lecture, "Is DRM Working? How Could We Tell?," *18th ACM Conference on Computer and Communications Security/Workshop on DRM*, Chicago, IL, Oct. 21, 2011
- Paper presentation, "Can a Computer Intercept Your E-mail?," *Privacy Law Scholars Conference*, Berkeley, CA, June 2, 2011
- Paper presentation, "Copyright's Middle Ground: The Interaction of Players and Video Games," *The Game Behind the Video Game Conference*, New Brunswick, NJ, Apr. 9, 2011
- Presentation, "Privacy vs. Anti-Piracy: How to Balance Rights in an Era of Online Copyright Infringement," *International Association of Privacy Professionals, Global Privacy Summit 2011*, Washington, DC, Mar. 11, 2011
- Panelist, "Privacy: Checking You Out," *4th Street Forum*, MPTV Ch. 10.1, Feb. 25, 2011
- Paper presentation, "Distinguishing Red Flags from Fuchsia Flags: The Tort Law Roots of Section 512," *Works in Progress in IP Conference*, Boston University, Boston, MA, Feb. 12, 2011
- Panelist, "Interactive Discussion on Video Game Play," New York Law School, *The State of Play: Law, Games, and Virtual Worlds*, Nov. 2003
- Paper presentation, "Strategies of Containment: The Defense of Marriage Act, Status Regime Conflicts, and the American Constitution," Harvard Law School, *Freedom To Marry: Consolidating Strategies, Planning Victories*, Feb. 1999

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COURSES TAUGHT

Marquette University Law School

Civil Procedure

Copyrights

Digital Rights Management (seminar)

Intellectual Property Law

Internet Law

Pretrial Practice (workshop)

Privacy Law

Torts

Directed Research topics: Trademark in Fictional Works; Complex Litigation; Space Law;
Cybersecurity Law; Privacy and Artificial Intelligence

Washington & Lee University School of Law

Contracts

Internet Law

Legal Writing

Patents

Michigan State University College of Law

E-Commerce

SERVICE

University

Health Care & Benefits Task Force (2019-present)

UAS Ad Hoc Faculty Statutes Review Committee (2018–2020, chair 2020)

Secretary, University Academic Senate (2018–2020)

University Academic Senate Executive Committee (2016–2018)

Senator, University Academic Senate (2008–2020)

Search Committee for VP for Corporate Engagement (2018)

Faculty Hearing Committee (2014–2017, chair 2015–2017)

Committee on Academic Policies and Issues (2014–2015)

Committee on Academic Technology (2010–2015)

Co-chair, University Copyright Committee (2010–2011)

Law School

Co-Director, Intellectual Property Program (2016–present)

Faculty Advisor, *Intellectual Property & Innovation Law Review* (2007-2009, 2012–present)

Blog Committee, 2008-present (chair 2013–2016, 2019–present)

Ad Hoc Journals Committee (Fall 2024)

Curriculum Committee (2023-present)

AI Discussion Group (Summer 2023)

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Admissions Committee (Spring 2019)
Ad Hoc Skills Committee (2013)
Advisor to Intellectual Property Law Society (2007-2009)
Intellectual Property Program Committee (2008-2009)
1L Advising Program (2008-2009)
Diversity Committee (2007-2008)
Student Life & Development Committee (2007-2008)

Professional

Reporter, Eastern District of Wisconsin Special Committee on Pro Bono Recruitment (2020–2023)
Reporter, Eastern District of Wisconsin Local Rules Committee (2018–present)
Member, Eastern District of Wisconsin Bar Association Ad Hoc Committee for Pro Bono Recruitment (2021–present)

ORGANIZATIONS

Member, State Bars of New York and Wisconsin
Member, Academic Advisory Board, Copyright Alliance
Member, Academic Advisory Board, Future of Privacy Forum
Member, Copyright Society of the U.S.A.