

## **GLYNN S. LUNNEY, JR.**

Texas A&M University School of Law  
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Fort Worth, TX 76102  
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### **ACADEMIC POSITIONS**

TEXAS A&M UNIVERSITY SCHOOL OF LAW July 2015 to present  
Joint Appointment: Distinguished Professor of Law and Professor of Engineering;  
Director, Engineering Law Program

*Courses:* Intellectual Property, Copyright Law, Trademark Law, Patent Law,  
International Intellectual Property, Law & Technology, Contracts I & II, Law &  
Economics, Property, Land Use Planning, Oil & Gas, Civil Procedure; Torts

*Bar Admissions:* California (1991), Louisiana (2000); Registered Patent Attorney (2000)

TULANE UNIVERSITY SCHOOL OF LAW	1991-2015
Joseph Merrick Jones Chair	2014-2015
McGlinchey Stafford Professor	2007-2015
C.J. Morrow Research Professor	2001-2002
Professor	1999-2015
Associate Professor	1994-1999
Assistant Professor	1991-1994

Visiting Professor, Washington University School of Law	Spring 2005
Courses: Copyright Law, Trademark and Unfair Competition Law	

Visiting Professor, Vanderbilt University Law School	Fall 2005
Minicourse on Trademark and Unfair Competition Law	

Visiting Associate Professor, University of Texas School of Law	Summer 1993
Course: Oil & Gas Law	

### **JUDICIAL CLERKSHIP**

Law Clerk to the Honorable John Minor Wisdom, United States Court of Appeals for the Fifth Circuit, New Orleans, LA	1990-1991
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### **PRE-LAW SCHOOL PROFESSIONAL EMPLOYMENT**

Production Engineer, Chevron USA, Inc., La Habra, CA	1985-1987
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### **EDUCATION**

TULANE UNIVERSITY, New Orleans, LA  
Ph.D., Economics, May 2006  
Dissertation: *The Law & Economics of Patents*  
Master of Arts, Economics, May 2002

## **EDUCATION (cont'd)**

STANFORD LAW SCHOOL, Palo Alto, CA  
Doctor of Jurisprudence with Distinction, June 1990

### *Honors and Activities*

Order of the Coif  
Stanford Law Review – Articles Editor  
First Place – High Technology Law Journal Comment Competition

TRINITY COLLEGE, Dublin, Ireland  
Rotary Fellowship for International Understanding, 1984-85

TEXAS A&M UNIVERSITY, College Station, TX  
Bachelor of Science, Petroleum Engineering, May 1984  
Magna Cum Laude

### *Selected Honors and Activities*

R.L. Whiting Award (selected by the faculty as the outstanding senior,  
Department of Petroleum Engineering, Class of 1984)  
Texas A&M University President's Endowed Scholar  
National Merit Scholar  
Phi Kappa Phi – Science and Engineering Honor Society  
Tau Beta Pi – National Engineering Honor Society (President, 1983-84)

## **SCHOLARSHIP**

### ***Books***

COPYRIGHT'S EXCESS: MONEY AND MUSIC IN THE U.S. RECORDING INDUSTRY  
(Cambridge U. Press 2018)

CASES AND MATERIALS ON TRADEMARK LAW (2d ed. 2015)

### ***Articles and Essays (peer-reviewed)***

*The Copyright Tax*, 68 J. COPYRIGHT SOC'Y \_\_\_\_ (forthcoming 2021)

*Empirical Copyright: A Case Study of File Sharing, Sales Revenue, and Music Output*,  
24 SUPREME COURT ECON. REV. 261 (2016)

*Patents, the Federal Circuit, and the Supreme Court: A Quiet Revolution*, 11 SUP. CT.  
ECON. REV. 1 (2004)

**SCHOLARSHIP** (cont'd)

*Articles and Essays*

COPYRIGHT'S EXCESS *Revisited*, 7 TEXAS A&M J. PROP. L. 59 (2020) (symposium on GLYNN LUNNEY, COPYRIGHT'S EXCESS: MONEY AND MUSIC IN THE US RECORDING INDUSTRY (2018))

*A Tale of Two Copyrights*, 2019-2020 AKRON L. REV. 987 (2020) (IP symposium issue)

*Copyright and the 1%*, 23 STAN. TECH. L. REV. 1 (2020)

*A Natural Right to Copy*, 99 B.U.L. REV. 2491 (2019)

*Copyright Lost*, 59 IDEA L. REV. 193 (2018)

*Two-Tiered Trademarks*, 56 HOUS. L. REV. 295 (2018)

*Trademark's De-Evolution: Why Courts Get Trademark Cases Wrong Repeatedly*, 106 CALIF. L. REV. 1195 (2018)

*Non-Traditional Trademarks: The Error Costs of Making an Exception the Rule in THE PROTECTION OF NON-TRADITIONAL TRADEMARKS: CRITICAL PERSPECTIVES* (Oxford U. Press 2018)

*FTC v. Actavis: The Patent-Antitrust Intersection Revisited*, 93 N. CAR. L. REV. 375 (2015)

*Copyright's Mercantilist Turn*, 42 FLORIDA STATE L. REV. 95 (2015)

*Aereo and Copyright's Private-Public Performance Line*, 162 U. PENN. L. REV. ONLINE 205 (2014)

*Copyright on the Internet: Consumer Copying and Collectives*, in EVOLUTION AND EQUILIBRIUM: COPYRIGHT THIS CENTURY (2014)

*Not So Obvious After All: Patent Law's Nonobviousness Requirement, KSR, and the Fear of Hindsight Bias*, 47 GA. L. REV. 41 (2012) (co-authored with Christian T. Johnson)

*Copyright, Derivative Works, and the Economics of Complements*, 12 VAND. J. ENT. & TECH. L. 779 (2010) (symposium issue: Drawing Lines in the Digital Age)

*Copyright, Private Copying, and Discrete Public Goods*, 12 TULANE J. TECH. & INT. PROP. 1 (2009)

*Patents and Growth: Empirical Evidence from the States*, 87 N. CAR. L. REV. 1467 (2009) (symposium issue: Frontiers of Empirical Patent Law Scholarship)

**SCHOLARSHIP (cont'd)**

*On the Continuing Misuse of Event Studies: The Example of Bessen and Meurer*, 16 J. INT. PROP. L. 35 (2008) (symposium on BESSEN & MEURER, PATENT FAILURE: HOW JUDGES, BUREAUCRATS, AND LAWYERS PUT INNOVATORS AT RISK (2008)).

*Copyright's Price Discrimination Panacea*, 21 HARV. J. L. & TECH. 387 (2008)

*Trademarks and the Internet: The United States' Experience*, 97 TRADEMARK REP. 931 (2007)

*Copyright Collectives and Collecting Societies: The United States Experience*, in COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS (Daniel Gervais ed., 2006)

*Distinguishing Dastar: Consumer Protection, Moral Rights, and Section 43(a)*, in CONSUMER PROTECTION IN THE AGE OF THE 'INFORMATION ECONOMY' (2006)

*Fair Use and Market Failure: Sony Revisited*, 82 B.U.L. REV. 975 (2002)

*The Death of Copyright: Digital Technology, Private Copying, and the Digital Millennium Copyright Act*, 87 VIRGINIA L. REV. 813 (2001)

*E-Obviousness*, 7 MICH. TELE. & TECH. L. REV. 363 (2001) (Internet patent symposium)

*The Trade Dress Emperor's New Clothes: Why Trade Dress Does Not Belong on the Principal Register*, 52 HASTINGS L. REV. 1131 (2000)

*Takings, Efficiency, and Distributive Justice: A Response to Professor Dagan*, 99 MICH. L. REV. 157 (2000)

*Trademark Monopolies*, 48 EMORY L.J. 367 (1999)

Winner of the 1999 Ladas Memorial Award as the Outstanding Article on Trademark and Unfair Competition Law

*Protecting Digital Works: Copyright or Contract?*, 1 TULANE J. TECHNOLOGY & I.P. 1 (1999) (available on-line at <http://www.law.tulane.edu/journals/jtip/V1|1/copycon.html>)

*Lotus v. Borland: Copyright and Computer Programs*, 70 TUL. L. REV. 2397 (1996) (commemorative issue)

*Reexamining Copyright's Incentives-Access Paradigm*, 49 VAND. L. REV. 483 (1996)

*Responsibility, Causation, and the Harm-Benefit Line in Takings Jurisprudence*, 6 FORDHAM ENV'T L. REP. 433 (1995) (regulatory takings symposium)

*Compensation for Takings: How Much is Just?*, 43 CATH. L. REV. 721 (1993) (Court of Claims takings symposium)

## **SCHOLARSHIP (cont'd)**

*A Critical Re-Examination of the Takings Jurisprudence*, 90 MICH. L. REV. 1892 (1992)

*Another View of Eastman Kodak v. ITS*, THE COMPUTER LAW., Nov. 1992, at 22

Comment, *Atari v. Nintendo: Does a Closed System Violate the Antitrust Laws?*, 5 HIGH TECH. L.J. 29 (1990)

Comment, *Copyright Protection for ASIC Gate Configurations: PLDs, Custom and Semicustom Chips*, 42 STAN. L. REV. 163 (1989)

## **CONGRESSIONAL TESTIMONY**

*The Scope of Copyright Protection*, House Subcommittee on the Courts, Intellectual Property, and the Internet, Jan. 14, 2014

## **SELECTED PRESENTATIONS**

### *Copyright's L Curve Problem*

Works-in-Progress IP Colloquium, University of Houston, Feb. 2019

Boston University Presentation, Apr. 2019

Copyright Scholars Roundtable, University of Pennsylvania, June 2019

Society for Economic Research on Copyright Issues, Montpellier, France, July 2019

### **COPYRIGHT'S EXCESS: MONEY AND MUSIC IN THE US RECORDING INDUSTRY (2018)**

Book launch presentation at American University's Global Congress on IP, Oct. 2018

Notre Dame Roundtable, Oct. 2018

Texas A&M Property Law Journal Roundtable, Feb. 2019

### *Trademark Functionality*

EPIP, Berlin, Germany, Sept. 2018

IP Researchers Asia, Kuala Lumpur, Malaysia, Jan. 2019

Empirical IP Roundtable, USPTO, Alexandria, VA, Apr. 2019

### *Copyright's Transformation*

ATRIP, Helsinki, Finland, Aug. 2018

*Copyright: Not Quite Dead Yet After All*, Redux Conference, UNH School of Law, Franklin Pierce IP Center, Apr. 7, 2018

*Two Tiered Trademarks*, Works-in-Progress IP Colloquium, Case Western Reserve School of Law, Cleveland, OH, Feb. 17, 2018

*Copyright's Transformation*, Intellectual Property Scholars Conference, Cardozo School of Law, New York, NY, Aug. 10, 2017

**PRESENTATIONS (cont'd)**

*Trademarks's De-Evolution*, International Trademark Association's 139<sup>th</sup> Annual Meeting, Barcelona, Spain, May 23, 2017

*Copyright's Price Discrimination Deficit*, 14<sup>th</sup> Annual Works-in-Progress IP Colloquium, Boston University, Boston, MA, Feb. 11, 2017

*Nontraditional Trademarks: The Error Costs of Making an Exception the Rule*, Nontraditional Trademarks, Singapore Management University, Singapore, Jan. 27, 2017

*Copyright's Excess*, Second Annual IP Scholars Roundtable, Texas A&M University School of Law, Fort Worth, TX, Oct. 7, 2016

*Trademark Law: A Year in Review*, Oklahoma State Bar, IP Section, Dallas, TX, June 5, 2016

*Copyright and Market Structure*, 8<sup>th</sup> Annual Conference on Innovation and Communications Law, University of Eastern Finland, Joensuu, Finland, May 26, 2016

*Professor vs. Practitioner Debate*, International Trademark Association's 138<sup>th</sup> Annual Meeting, Orlando, FL, May 22, 2016

*Trademark's De-Evolution*, IP in the Trees, Lewis & Clark School of Law, Portland, OR, April 10, 2016

*Copyright's Excess*, Plenary Session, 13<sup>th</sup> Annual Works-in-Progress Intellectual Property Colloquium, University of Washington, Seattle, WA, Feb. 19, 2016 and Faculty Exchange, Penn State University, Dickinson, PA, Feb. 4, 2016

*Moderator*, Copyright Society of the USA, Mid-Winter Meeting, New Orleans, LA, Feb. 12, 2016

*The De-Evolution of Trademark Law*, Works-in-Progress IP Colloquium, United States Patent & Trademark Office, Alexandria, VA, Feb. 7, 2015

*Empirical Copyright: A Case Study of File Sharing and Music Output*, European Commission, Copyright Unit, Brussels, Belgium, June 2, 2014

*The Next Great Copyright Act*, Berkeley, CA, Apr. 4, 2014

*The Right of Publicity and the First Amendment: A Fundamental Re-Examination*, Works-in-Progress Intellectual Property Colloquium, Santa Clara University School of Law, Feb. 8, 2014

*Reverse Payment Settlements: The Patent-Antitrust Intersection Revisited*, Intellectual Property Scholars Conference, Yeshiva University Cardozo School of Law, Aug. 8, 2013

**PRESENTATIONS (cont'd)**

*Copyright on the Internet: Consumer Copying and Collectives*, Evolution and Equilibrium: Copyright this Century, Victoria University, Wellington, NZ, Nov. 16, 2012

*Copyright's Mercantilist Turn*, Intellectual Property Scholars Conference, Stanford, CA, Aug. 10, 2012

*Empirical Evidence on the SOPA/PIPA Debate*, Innovate/Activate 2.0, Apr. 9, 2012, Berkeley, CA

*Not So Obvious After All: Patent Law's Nonobviousness Requirement, KSR, and the Fear of Hindsight Bias*, Works-in-Progress IP Colloquium, UH School of Law, Feb. 11, 2012; IPSC, DePaul College of Law, Aug. 12, 2011

*Trademark's Functionality Doctrine: Functional is as Functional Does*, INTA's Annual Meeting, Boston, MA, May 24, 2010

*Antitrust Implications of the Google Book Search Settlement*, Symposium in Honor of Lolly Gasaway, UNC School of Law, March 19, 2010

*Copyright, Derivative Works, and the Economics of Complements*, Boston University, May 7, 2010; Vanderbilt Journal of Entertainment & Technology Law, Symposium: Drawing Lines in the Digital Age: Copyright, Fair Use, and Derivative Works, Oct. 23, 2009

*Copyright, Private Copying, and Discrete Public Goods*, Works-in-Progress IP Colloquium, Seton Hall, Oct. 2, 2009

Participant, Research Roundtable, Preview of SOLOMON'S KNOT: HOW LAW CAN END THE POVERTY OF NATIONS, Searle Center for Law, Regulation, and Economic Growth, Northwestern University School of Law, Dec. 11-12, 2008

Commenter, Law & Business Conference on Supply Chain Economics, Vanderbilt University School of Law, Oct. 30-31, 2008

*Patents and Growth: Empirical Evidence from the States*, Conference on the Frontiers of Empirical Patent Scholarship, University of North Carolina School of Law, Oct. 23-24, 2008

Co-organizer and presenter, *Functional Is as Functional Does: Trademark Law's Functionality Doctrine*, Works-in-Progress Intellectual Property Colloquium, Tulane University School of Law, Oct. 3-4, 2008

**PRESENTATIONS (cont'd)**

*On the Continuing Misuse of Event Studies: The Example of Bessen and Meurer*, Conference on PATENT FAILURE: HOW JUDGES, BUREAUCRATS AND LAWYERS PUT INNOVATION AT RISK, Georgia State University School of Law, Mar. 29, 2008  
*The Law, Economics, and Morality of Private Copying*, Cardozo School of Law, Jan. 24, 2008

Debate with Scott Kieff on *Re-Thinking Copyright: Should it be a Monopoly or a Property Right and What About Fair Use?*, New York Chapter, Copyright Society, Jan. 24, 2008

*Copyright's Price Discrimination Panacea*, Works-in-Progress Intellectual Property Colloquium, American University, Washington College of Law, September 29, 2007

*Copyright in Transition: Works of Authorship as Discrete Public Goods*, Chicago-Kent College of Law, January 30, 2007; University of Michigan Law School, March 14, 2007

*The Valuation of IP Assets*, AIPLA Mid-Winter Meeting, New Orleans, Louisiana, January 26, 2007

*Copyright, the Open Source Movement, and the Future of Research Libraries*, Keynote Speech, Mid-Continent Medical Research Librarians Annual Meeting, October 12, 2006

*The Law, Economics, and Morality of File Sharing*, Faculty Presentation, Vanderbilt Law School, October 27, 2005

*Direct and Indirect Stock Price Reactions to Patent Decisions*, Works-in-Progress Intellectual Property Colloquium, Boston University School of Law, September 11, 2004

*Copyright and P2P Issues*, Retreat of the Intellectual Property and Technology Group, O'Melveny & Myers, L.L.P., May 22, 2004

*Patents and Growth: Empirical Evidence from the States*, Boston University School of Law, April 12, 2004

*Copyright as a Coordinating Mechanism*, Intellectual Property, Sustainable Development, and Endangered Species: Understanding the Dynamics of the Information Ecosystem, Michigan State University – DCL College of Law, March 26, 2004

*Copyright Preemption and Viral Contracts*, Joint Meeting of Sections on Intellectual Property and on Law & Computers, American Association of Law Schools Annual Meeting, January 5, 2004

*P2P Copyright Liability Issues Facing Universities*, Paperclip Communications Audio Conference, November 18, 2003



**PRESENTATIONS (cont'd)**

*Patents and Growth: Empirical Evidence from the States*, Works-in-Progress Intellectual Property Colloquium, Tulane University School of Law, October 17-18, 2003

*TRIPs Trap: Who Benefits from Uniformly High Intellectual Property Rights?*, Faculty Presentation, George Mason University School of Law, October 14, 2003

Participant, Third Annual Intellectual Property Scholars Conference, University of California at Berkeley, August 8-9, 2003

Panelist, *Third Party Liability in Copyright Law*, International Industrial Organization Conference, Boston, Massachusetts, April 5, 2003

*The Law and Economics of the Public Domain*, Conference on the Economics of Fair Use, University of Texas, Austin, Texas, April 4, 2003

*Cable Retransmission Consent and Local Broadcasters: Part of the Solution or Part of the Problem?*, 30th Annual Telecommunications Policy Research Conference, Alexandria, Virginia, September 29, 2002

*Patents, the Federal Circuit, and the Simply Property Perspective*, Federal Trade Commission and Department of Justice Antitrust Division, Competition and Intellectual Property Public Hearings, Washington, D.C., July 10, 2002

*Copyright and the Supposed Efficiency of First-Degree Price Discrimination*, American Law & Economics Association Annual Conference, Harvard Law School, May 4, 2002

*Fair Use and Market Failure: Sony Revisited*, New York University School of Law Innovation Law & Policy Colloquium, February 7, 2002

*The Death of Copyright*, Federal Judicial Conference, New Orleans, Louisiana, May 15, 2001

*Software Licensing*, Hyperion Solutions, New Orleans, Louisiana, April 27, 2001

*The Future of Copyright*, Loyola University New Orleans, School of Law, April 20, 2001

*The Death of Copyright*, University of Cincinnati School of Law Faculty Colloquium, March 30, 2001

*E-Obviousness*, George Washington University Law School  
*E-Equivalence* Conference on Internet Patents, October 27, 2000

*Copyright Law: Roots Music Ownership Issues*, Cutting Edge Music Business Conference, September 22, 2000

**SELECTED ACADEMIC SERVICE**

Chair, Section on Intellectual Property, American Association of Law Schools, 2005

Co-Founder with Professor Michael Meurer, Works-in-Progress Intellectual Property Colloquium (an annual conference held initially at Tulane in 2003)

Chair, Tenure Committee, Texas A&M University School of Law, 2016-2019, 2020-2022

Director, Engineering Law Program, Texas A&M University

Co-Founder and Co-Director, Tulane Center for Intellectual Property, Media, and Culture

Self-Study and Strategic Planning Committee, Tulane University School of Law, 2012-2013, 2006-2007

Murphy Institute Director Search Committee, Tulane University, 2008-2009

Senate Committee on Academic Freedom and the Responsibility of Students, Tulane University (Chair, 1998-2001)

Dean Search Committee, Tulane University School of Law, 2008-2009

Breaux Chair Search Committee, Tulane University School of Law, 2006-2007

Promotion and Tenure Committee, Tulane University School of Law (Chair, 2007-2008; 2010-11)

Appointments Committee, Tulane University School of Law (Chair, 1999-2000)

Faculty Grievance Committee, Tulane University School of Law (Chair, 2008-2010)

Founding Faculty Adviser, Tulane Journal of Technology and Intellectual Property, Tulane University School of Law