# Deborah R. Gerhardt

Reef C. Ivey II Excellence Fund Term Professor of Law

UNC School of Law

TheUniversity of North Carolina at Chapel Hill

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# EDUCATION

**Case Western Reserve University School of Law,** Cleveland, Ohio

J.D. *cum laude*, May 1990

**Duke University,** Durham, North CarolinaA.B. May 1987

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# PROFESSIONAL EXPERIENCE

**UNC School of Law**, Chapel Hill, North Carolina

|  |  |  |
| --- | --- | --- |
| Professor of Law  |   | 2020 – present  |
| Reef C. Ivey II Excellence Fund Term Professor of Law   |   | 2019 – present  |
| Associate Professor of Law  |   | 2015 – 2020  |
|  |  |   |
| Assistant Professor of Law   |   | 2009 – 2015  |
| Director of Intellectual Property Initiative and Adjunct Professor of Law   |   | 2005 – 2009  |
| Copyright and Scholarly Communications Director  |  | 2005 – 2008 |
| **William & Mary Law School,** Williamsburg, Virginia  |   |   |
| Senior Lecturer  |   | 2004 – 2005  |
| Adjunct Professor  |   | 2002 – 2004  |
|  **The University of Richmond** **Law School**, Richmond, Virginia  |
| Associate Director, The Intellectual Property Project  | 2004 – 2005  |

 **Hunton & Williams**,Richmond, Virginia

Associate 1998 – 2000

 **Jones Day Reavis & Pogue**,Cleveland, Ohio

 Associate 1992 – 1998

**United States District for the Northern District of Ohio**,Cleveland, Ohio

Law Clerk, Honorable Judge John M. Manos1990 – 1992

# BAR AND COURT ADMISSIONS

North Carolina 2006

Virginia 1999

Ohio 1990

United States Court of Appeals for the Sixth Circuit 1996

United States District for the Eastern District of Michigan 1995

United States District for the Northern District of Ohio 1992

# HONORS AND AWARDS

Selected for the Professor S. Elizabeth Gibson Award for Faculty Excellence in 2020

Named the Reef C. Ivey II Excellence Fund Term Professor of Law in 2019

Selected to Serve as Chair for the American Association of Law Schools Art Law Section

2018

Selected to Serve on the Board for the American Association of Law Schools Intellectual

Property Section for 2017-2018

University Teaching Award for Post-Baccalaureate Instruction at UNC 2017

Institute of Arts and Humanities Faculty Fellows Program for the Spring of 2017

University of North Carolina

Selected to Participate in West Academic Publishing’s Innovation Summit

St. Paul, Minnesota, July 2016

Selected to be one of 16 scholars in the U.S. to participate in the Advertising Educational Foundation’s 2015 Visiting Professor Program and the first to be hosted by J. Thompson in Atlanta, Georgia in June 2015

Winner of the Pitch Competition at the Chancellors' Faculty Entrepreneurship Bootcamp, May 14, 2015

Selected to be a Founding Member of the Trademark Law Reform Project in 2014

Featured in Chapel Hill Magazine’s First Women’s Issue, November 2014

Awarded Second Prize in the 2013 Ladas Memorial Competition for trademark scholars

Selected to participate in the Junior Scholar’s in Intellectual Property conference at Michigan State University in Lansing Michigan in 2011 and 2012

Selected to participate as one of three fellows in IPIL/HOUSTON (the Institute for

Intellectual Property & Information Law at the University of Houston Law Center) 2011 National Conference on “Trademarks: Today and Tomorrow” in Santa Fe, New Mexico

Recipient of the 2007 Outstanding Achievement Pro Bono Award for the Intellectual

Property Section of the North Carolina Bar Association

**BIBLIOGRAPHY:**

##  Works in Progress

An Empirical Study of Gender and Race in Trademark Prosecution, 94 S. Cal. L. Rev. \_\_ (forthcoming 2021)(with Miriam Marcowitz-Bitton and William Michael Schuster)

Law in the Shadows of Confederate Monuments

## Published Works

Bot Contracts, 67 Ariz. L. Rev. 877 (2020)(with David Thaw).

Copyright Publication on the Internet, 60 IDEA UNH L. Rev.1, 1-44 (2020).

Owning Colors, 40 Cardozo L. Rev. 101-159 (2019)(with Jon McClanahan)

A Masterclass in Trademark’s Descriptive Fair Use Defense, 52 Akron Law J. 739-761

(2019).

A Behavioral Economics View ofJudge Posner’s Contracts Legacy, 50 University of Pacific

Law Review 349-362 (2019)

Beware the Trademark Echo Chamber: Why Federal Courts Should Not Defer to USPTO

Decisions, 33 Berkeley Tech. L.J. 643-688 (2019)

 Featured in World Trademark Review: Victoria Arnold, “Don't be afraid to challenge USPTO registration decisions” urges US academic.” April 4, 2019

Trademarks as Entrepreneurial Change Agents for Legal Reform, 95 N.C.L. Rev 1519-1560

(2017)

Consumer Investment in University Brands, 29 LOYOLA CONSUMER L. REV. 95-120 (2016) Selected for republication in the IHELG monograph series

BRIDGE TO PRACTICE: CONTRACTS SIMULATIONS (with Michael Malloy) for Thomson Reuters (2015)(151 pages)

Lexmark and the Death of Initial Interest Confusion 7 Landslide Magazine 1, 22-28 (2014) cited in ADT, LLC v. Capital Connect, Inc., 145 F. Supp. 3d 671 (N.D. Tex. 2015)

Copyright at the Museum: Using the Publication Doctrine to Free Art and History, 61

Journal, Copyright Society of the U.S.A. 393-451 (2014)

Do Trademark Attorneys Make a Difference? ITMA Review 22-24 (October/November

2013) (with Jon McClanahan)

Do Trademark Lawyers Matter?, 16 Stanford Tech. L. Rev. 583-622 (2013)(with Jon

McClanahan)

Social Media Amplify Consumer Investment in Trademarks, 90 N.C.L. Rev 1491-1530

(2012)

Awarded Second Prize in the 2013 Ladas Memorial Competition

Reprinted in the 2013 edition of the Intellectual Property Law Review, an anthology published annually by Thomson Reuters (West) after having been selected as “one of the best law review articles related to intellectual property law published within the last year.”

Copyright Publication: An Empirical Study, 87 Notre Dame L. Rev. 135-204 (2011)

Reprinted in 2012 edition of the ENTERTAINMENT, PUBLISHING AND THE

ARTS HANDBOOK (West) after being selected as one of “the best law review articles published within the last year in the fields of entertainment, publishing and the arts.”

Fair Use and Fairness on Campus, 11 N.C. J.L. & Tech. 461-530 (2010)(co-authored with

Madelyn F. Wessel)

Consumer Investment In Trademarks, 88 N.C.L. Rev 427-500 (2010)

Protect Your Right to Write Again: Tips for Assuring That Your Publication Agreement is A

Comfortable Fit, with Diane K. Kjervik, JD, RN, FAAN, 12 Journal of Nursing Law No. 3,

124-126 (2009)

The 2006 Trademark Dilution Revision Act Rolls out a Luxury Claim and a Parody

Exemption, 8 UNC. J.L. & Tech. 205-230 (2007)

The Rules of Attribution, The Chronicle of Higher Education, May 26, 2006, at B20.

Reprinted in Fred White and Simone J. Billings, The Well-Crafted Argument, A

Guide and Reader, 3rd ed. (Houghton Mifflin 2008) p. 347

Reprinted in John Alberti, Text Messaging: Reading and Writing About Popular

Culture (Houghton Mifflin 2009) p. 69

Plagiarism in Cyberspace: Learning the Rules of Recycling Content with a View Towards

Nurturing Academic Trust in an Electronic World, 12 Rich. J.L. & Tech. 1-29 (2006)

Note, A First Amendment Justification for Regulation of Racist Speech on Campus, 40 Case W. Res. L. Rev. 733-779 (1990)

## Selected Blogs, Podcasts and Op Ed Pieces

Abandoning Disparaging Marks Patently-O, June 27, 2020

https://patentlyo.com/patent/2020/06/abandoning-disparaging-marks.html

Deborah Gerhardt and Jon McClanahan Lee on Owning Colors

Ipse Dixit Podcast May 9, 2019

https://shows.acast.com/ipse-dixit/episodes/deborah-gerhardt-and-john-mcclanahan-lee-on-owning-colors

Seeing Red: Can a Brand Trademark a Signature Color?

Knowledge@Wharton

SiriusXM Business Radio Powered by The Wharton School

University of Pennsylvania

Philadelphia, Pennsylvania February 21, 2018

http://knowledge.wharton.upenn.edu/article/louboutin-red-soles/

“UNC Needs to Join Duke on the Right Side of Civil Rights”, August 23, 2017 http://www.charlotteobserver.com/opinion/op-ed/article168968782.html

“Offensive Speech and Trademarks at the Supreme Court”

Podcast for the National Constitution Center with Rebecca Tushnet and Ilya Shapiro,

January 17, 2017

https://constitutioncenter.org/experience/programs-initiatives/podcasts/P40

“To Honor Orlando’s Dead, NC Must Repeal HB-2” The Raleigh News & Observer, June

13, 2016

http://www.newsobserver.com/opinion/op-ed/article83552312.html

Pay our Teachers or Lose Your Job, Slate, January 5, 2014

http://www.slate.com/articles/life/education/2014/01/north\_carolina\_s\_assault\_on\_teach ers\_has\_to\_stop.html (generating more than 35,000 “likes” on fb)

A Thanksgiving Prayer for North Carolina, The Raleigh News & Observer, November 27,

2013

http://www.newsobserver.com/2013/11/27/3413201/gifting-nc-teachers-with-more.html

The Battle of Our Time, August 21, 2013

http://www.ncpolicywatch.com/2013/08/21/the-battle-of-our-time/

University of Alabama Can’t Stop Paintings of Famous Crimson Tide Football Moments— University of Alabama v. New Life Art, Technology and Marketing Law Blog, June 14, 2012 http://blog.ericgoldman.org/archives/2012/06/university\_of\_a.htm

## Selected Presentations and Workshops

Hostile Environments in the Shadows of Confederate Monuments

Art Law Works-in-Progress Colloquium

April 3, 2020

Beware the Trademark Echo Chamber

International Trademark Association Academic Day

Boston, Massachusetts

May 21, 2019

Contemporary Copyright Publication, 2nd Annual IP Scholarship Redux Conference

University of New Hampshire,

Concord, New Hampshire

April 12, 2019

Owning Colors, IP Lecture Series

John Marshall Law School

Chicago, Illinois

March 20, 2019 (1.5 hours of CLE credit)

A Masterclass in Trademark Fair Use

Akron Law IP Scholars Forum

Akron, Ohio

October 5, 2018

Beware the Trademark Echo Chamber

The Administrative Law of Intellectual Property

Berkeley Center for Law & Technology

University of California, Berkeley, School of Law

Berkeley, California

April 13, 2018

Legacies of Slavery: Monuments and Monumental Histories

American Universities, Monuments and the Legacies of Slavery

Duke University

Durham, North Carolina

March 30, 2018

Judge Posner and Irrationality

13th Annual International Conference on Contracts

Orlando, Florida

February 24, 2018

Owning Colors

Intellectual Property Scholars Conference

Cardozo Law School

New York, New York

August 10, 2017

Trademarks as Entrepreneurial Change Agents for Legal Reform

Symposium for the North Carolina Law Review

Chapel Hill, North Carolina October 7, 2016

Teaching Intellectual Property Topics to Arts Entrepreneurs, Expanding the Ensemble, the

2016 Society for Arts Entrepreneurship Education (SAEE)

Millikin University, Decatur, Illinois

October 14-15, 2016

The Mystery of the NCMA Cranach

LOOT: Looted Art, Cultural Property and Repatriation

Texas A&M University

Fort Worth, Texas September 9, 2016

Cultural Leadership Through Branding

Intellectual Property Law Scholars Conference

Stanford University

Stanford, California

August 10-11, 2016

Innovation in Branding and Social Entrepreneurship

Advertising in Digital Media: Disclosures and Transparency in Social Media

Consumer Law Review Symposium

Loyola University Chicago School of Law

March 18, 2016

Thought Leadership Through Branding

International Conference: The Many Faces of Innovation

Bar-Ilan University, Faculty of Law & Ono Academic College Faculty of Law

Tel Aviv, Israel

January 5, 2016

The Carolina Way (With Michael Ingersoll)

Ethics Around the Table

Parr Center

University of North Carolina

Chapel Hill, NC 27516

November 17, 2015

Legal Methods Junior/Senior Faculty Workshop

What's In vs. What's Out: How IP's Boundary Rules Shape Innovation

(with Christopher Sprigman)

University of Washington

Seattle, Washington

October 22, 2015

Owning Colors

Intellectual Property and Information Law Colloquium,

Benjamin N. Cardozo School of Law

New York, New York

April 27, 2015

Colors (with Jon McClanahan)

Work in Progress Intellectual Property Conference

United States Patent and Trademark Office

Alexandria, Virginia

February 6, 2015

Lexmark, Pom and the Death of Initial Interest Confusion

ABA Cyberspace Law Meeting

Charlotte, North Carolina

January 23, 2015

Panelist on Teacher Compensation for Harvard Law School’s Advocates for Education

Conference

Harvard Law School

Cambridge, Massachusetts

April 7, 2014

Freeing Art and History From Copyright’s Bondage

NE IP Colloquium

Suffolk University Law School

Boston, Massachusetts

March 21, 2014

An Empirical Study of False Advertising Claims

Works in Progress Intellectual Property Conference

Santa Clara University School of Law

Santa Clara, California

February 8, 2014

How to Succeed in Trademark Prosecution

(with Jon McClanahan)

Empirical IP Roundtable at Chicago-Kent

Chicago, Illinois

October 11, 2013

Do Trademark Lawyers Matter?

(with Jon McClanahan)

Empirical Studies of Trademark Data

(sponsored by NYU Law School and the USPTO)

Washington, DC

September 26, 2013

An Empirical Study of False Advertising Cases

Faculty Workshop

Duke Law School

Durham, North Carolina

June 5, 2013

Do Trademark Lawyers Matter?

INTA Trademark Scholarship Symposium

Dallas, Texas

May 6, 2013

Intellectual Property for Entrepreneurs

Small Business Center

Vance Granville Tech

Louisburg, North Carolina

April 30, 2013

An Artist Meets The Crimson Tide

UNC School of Law

CLE Course at the University of North Carolina Festival of Learning

Chapel Hill, North Carolina

February 8, 2013

Do Trademark Lawyers Matter?

Faculty Workshop

UNC School of Law

Chapel Hill, North Carolina

February 7, 2013

Copyright and Trademark Law for Entrepreneurs

Social Innovation Incubator

Campus Y

University of North Carolina

Chapel Hill, North Carolina

December 4, 2012

Freeing History From Copyright’s Bondage

Faculty Workshop

University of Illinois College of Law

Champaign, Illinois

September 14, 2012

Saving Archived Works from a Copyright No Man’s Land

Junior Scholars in Intellectual Property (JSIP) Workshop

Michigan State University College of Law

Lansing, Michigan

May 30-31, 2012

Saving Archived Works from a Copyright No Man’s Land

Duke-UNC Junior Scholars Workshop Series

Chapel Hill, North Carolina

May 14, 2012

Copyright Publication and Visual Works

Works in Progress Intellectual Property Conference

University of Houston Law Center

Houston, Texas

February 11, 2012

Social Media Amplify Consumer Investment in Trademarks

North Carolina Law Review Symposium, "Social Networks and the Law”

Chapel Hill, North Carolina

November 18, 2011

Intellectual Property: What Artists Need to Know

A Free Workshop for Artists and Artisans about the Intersection of Creativity and Law hosted by NC LEAP YMI Cultural Center

Asheville, North Carolina

August 18, 2011

Copyright Publication: An Empirical Study

Junior Scholars in Intellectual Property (JSIP) Workshop

Michigan State University College of Law

Lansing, Michigan

April 15-16, 2011

Copyright Fair Use: A Look at How Common Myths Hold Up Next To Recent Precedent

CLE Course at the University of North Carolina Festival of Learning

Chapel Hill, North Carolina

February 11, 2011

Copyright Publication: An Empirical Study

Chicago-Kent College of Law

Chicago, Illinois

January 25, 2011

Searching for the Public Domain in a Copyright Publication Maze

University of North Carolina School of Journalism and Mass Communication

Chapel Hill, North Carolina

November 18, 2010

Working Towards Clarity on Copyright Publication for Visual Works

Joint Annual Meeting of the Council of State Archivists, National Association of Government Archives and Records Administrators, and Society of American Archivists Washington, D.C.

August 14, 2010

An Empirical Study of U.S. Copyright Publication Cases

Intellectual Property Scholars Conference

Berkeley, California

August 12, 2010

The Importance of Copyright Publication to the Digital Library

The Dean Lolly Gasaway Tribute Symposium: Digital Publication and Libraries

Chapel Hill, North Carolina

March 19, 2010

Using Copyright Publication to Map the Public Domain

AALS Annual Meeting

New Orleans, Louisiana

January 8, 2010

Errand into the Maze: Results of an Empirical Study Designed to  Clarify Whether Works are in the Public Domain

Presentation to the North Carolina Library Association

Greenville, North Carolina

October 9, 2009

An Empirical Study of US Copyright Publication Cases

Works in Progress Intellectual Property Colloquium 2009 at the Seton Hall University

School of Law

Newark, New Jersey

October 2, 2009

Consumer Investment in Trademarks

University of North Carolina School of Law

Chapel Hill, North Carolina

October 3, 2008

Consumer Investment in Trademarks

Indiana University School of Law-- Bloomington

Bloomington, Indiana

September 25, 2008

The Two Sides of the Youtube Litigation (with Swain Wood)

Presentation to Intellectual Property Section of the North Carolina Bar Association

Cary, North Carolina

February 28, 2008

# AMICUS BRIEFS

Viacom International, Inc. v. Youtube, Inc. and Google, Inc., Case Nos. 10-3270 and 103342 in the United States Court of Appeals for the Second Circuit, coauthored (with

Michael Barclay) for the Consumer Electronics Association

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|   | **TEACHING** Courses Taught in the Past Three Years   |

Courses: Art Law, Arts Entrepreneurship, Contracts, Copyright Law, Intellectual Property Survey, Trademark Law

International Courses:

Copyright and Trademark: The Intersection of Law and Creativity (at Bar Ilan in Tel Aviv,

Israel, 2015)

Intellectual Property Survey (offered to French law students at the Institut de Droit

Comparé Edouard Lambert in Lyon, France, 2013)

# GRANTS

Principal Investigator for a $150,000 grant from the Andrew W. Mellon Foundation to support empirical copyright research on the doctrine of publication in Copyright Law from 2008-2011

**SERVICE**

# Professional Service Related to Law

|  |  |
| --- | --- |
| Chair, American Association of Law Schools Art Law Section  | 2018-present  |
| Provide Bono Counsel for Artists, Low Wealth Entrepreneurs, Nonprofit Arts Organizations, Musicians and Museums   | 1992- present  |
| Coach, 2 INTA Moot Court Trademark Teams   | 2016 – present  |
| UNC School of Law Diversity and Inclusion Committee, Member   | 2018 – present  |
| UNC Center for Media Law & Policy  Member of Advisory Board   | 2009 – present  |
| Advisor, Carolina Intellectual Property Law Association  | 2008 – present  |
| UNC Entrepreneurship Task Force, Member   | 2017 - 2019  |
| Member, American Association of Law Schools Intellectual Property Section   | 2017-2018  |
| UNC Law School Speakers’ Committee  Member   | 2013 – 2014  |
| UNC Law School Admissions Committee  | 2016 – 2017  |
|  Member  | 2012 – 2013  |

North Carolina Bar Association

 NC LEAP (provides pro bono legal services to low wealth entrepreneurs)

|  |
| --- |
|  Chair, Education Committee 2010 – 2012  |
|  Member of Steering Committee  |   | 2007 – 2012  |
|  Intellectual Property Section Liaison  |   | 2007 – 2012  |
|  Volunteer  |   | 2007 – 2012  |
|   |   |   |
| Technology Committee, UNC School of Law  |   |  |
|  Chair  |   | 2010 – 2011  |
|  Member  UNC Law School, Journal of Law and Technology  |   | 2005 – 2009  |
|  Advisor  |   | 2006 – 2011  |

# UNC SERVICE

PlayMakers Advisory Council

|  |  |  |
| --- | --- | --- |
|  Founding Co-Chair of Women’s Point of View  |   | 2016 – present  |
|  Member of Artistic Director Search Committee  |   | 2015  |
|  Member  Copyright Committee  |   | 2011 – present  |
|  Member  |   | 2006 – 2015  |
|  Ex Officio Member  Scholarly Communications Committee  |   | 2005 – 2006  |
|  Co-chair  |   | 2006 – 2007  |
|  Member  Collection Development Council, University Library  |   | 2005 – 2006  |
|  Member  |   | 2006 – 2008  |

Scholarly Communications & Digital Curation/Institutional Repository

Steering Committee

 Member 2006 – 2008

# COMMUNITY SERVICE

School Improvement Teams, CHCCS Public Schools

Chapel Hill, North Carolina

organized crowdfunding campaigns that raised over $175,000 in cash bonuses for k-12 public school employees

 Carrboro High School

 Parent Co-Chair 2016 – 2017

 Member 2016 – 2018

 Culbreth Middle School

 Parent Co-Chair 2013 – 2016

 Member 2012 – 2017

 Mary Scroggs Elementary School 2007 – 2009

 Member 2011 – 2012

Founder, Pay our Teachers First 2013 – 2018

Interfaith Community Council 2007 – 2009

 Chapel Hill, North Carolina

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**RESEARCH STATEMENT**

My scholarship focuses on the intersection of law and creativity, with a particular focus on copyright, trademark and art law. Much of my work is interdisciplinary. I have done extensive interdisciplinary research on how art and trademarks serve as repositories for meaningful community values. My copyright scholarship seeks to clarify the ambiguities about whether creative and historical works are in the public domain. I conduct empirical, theoretical and practically grounded research. I write for diverse audiences of legal scholars, practicing attorneys, judges, advertising professionals, museum and library professionals, writers, photographers and artists.

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I believe it is a privilege to help students launch their careers. I work to help them see that law can inspire passionate engagement and serve as a platform for creativity. I strive to improve my students’ sense of professionalism, critical thinking, self-confidence, oral and written advocacy skills and a deep understanding of intellectual property law and its practical implications. I work to bolster student confidence to confront difficulties and to seek the joy of working through challenges they feared they might not overcome. In every class I teach, I work to show my students that the issues we study are not just printed in books but involve real people with real disputes. I create opportunities for my students to engage with leading lawyers to inspire a sense of the exciting possibilities ahead of them. Before joining the academy, I practiced law for more than a decade, and I continue to work on intellectual property matters for museums, artists, and low wealth entrepreneurs. I frequently draw on my substantial practical experience in my teaching.

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I wholeheartedly embrace the proud public service tradition at UNC. I have nurtured a community of UNC students and alumni who are passionate about intellectual property law. I serve this community by coaching two trademark moot court teams, working as a faculty adviser to the Carolina Intellectual Property Association, organizing guest speakers, networking opportunities, arts excursions and summer IP student/alumni lunches in different cities. I have served the law school community by serving on various committees and working to make the law school’s goal of inclusion a daily reality for all our students. I

serve the broader University community by teaching arts entrepreneurship to undergraduates, teaching and lecturing across campus about intellectual property issues, and providing pro bono intellectual property counsel to Playmakers Repertory Company, artists, musicians, UNC faculty and low wealth entrepreneurs.

I am deeply committed to professional and public service outside the University as well.

I am an active member of the IP scholarship community. I was selected to serve on the AALS IP committee and currently chair the AALS Art Law Committee. I am an active member of the International Trademark Association. I frequently attend IP conferences and am asked to speak and teach nationally and internationally.

I provide substantial service to K-12 public education in our local community. Over the past several years, I have led efforts to raise more than $175,000 in cash bonuses for K-12 public school teachers and have served as a member of the School Improvement Teams at Carrboro High School and Culbreth Middle School.

Date: February 28, 2021