

Pam Samuelson Session 04 Auth...Libraries, and Free Expression

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SPEAKERS

David Hansen, Zahr Said, Sonia Katyal, Brewster Kahle, Nicole Boucher, Molly Shaffer Van Houweling, John Mashey, Lydia Loren, Pam Samuelson, Marti Hearst, Lila Bailey, Participant, MacKenzie Smith, Daniel Gervais



Molly Shaffer Van Houweling 00:13

Pam's scholarship and efforts to improve copyright law have focused in particular on people, institutions and values that have otherwise been underrepresented in copyright debates. That work is the focus of our next panel, entitled Authors, Libraries and Free Expression. Our moderator is Lydia Loren, the Henry J. Casey Professor of Law at Lewis & Clark Law School, and she'll be introducing our panelists. Thanks Lydia.



Lydia Loren 00:41

Wow. What what a fabulous gathering, I'm really honored to be a part of it, to be here to celebrate Pam's work and legacy. I loved the metaphor that we were given earlier of a family reunion, it really does feel like a family reunion, although without some of the dysfunction that comes with family reunions, because this is a family that we get to pick, right. These are the people that we like to be around and have interesting engaging conversations with. So I think Molly asked me to moderate this panel, because she knows I'm a crier. And I get emotional when I talk about people who mean a lot to me, so she wanted to limit my time at the mic, I think is really what was going on. But I wanted to say like many I have written a note on the kudos board thanking Pam for many, many things in my life. But since this is a panel focused on authors, libraries, and free expression, I just want to say a public thank you to Pam for one of probably my favorite articles I've ever written. And it was Pam had read my work on looking at the creative commons license as a kind of semi commons. And she asked me to take that lens and direct it at orphan works for a conference that she was putting together. And so I did that. And it was the most fun I ever had, researching a paper, but definitely the most fun I ever had presenting a paper because I decided that they weren't orphan works. They were hostage works. And, and so I that was a that was a great paper. It was a great, great fun conference, and it's all due to Pam. Right. It's all because of Pam. So I have the great pleasure of introducing our panel today. On Authors, Libraries, and Free Expression we have Sonia Katyal,

the Roger J. Traynor Distinguished Professor of Law at Berkeley. Next, Daniel Gervais, the Milton R. Underwood Chair in Law at Vanderbilt Law. Then Brewster Kahle, the digital librarian at the Internet Archive. And we were to have Carla Hesse, the Peder Sather Professor of History at UC Berkeley, but she has lost her voice. So filling in for her, and I think he's going to read some of what she wanted to have read here today, is David Hansen, who is the Executive Director of the Authors Alliance. So with that, I turn it over to Sonia.

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Sonia Katyal 03:05

Thank you. Thanks so much, everyone. Gosh, I'm also a crier. I'm about to cry right now. It's just wonderful to be here. And it's just wonderful to see you Pam, and just be able to celebrate you. Okay, I'm going to try not to cry at the outset. So it's really great to be here with all of you. This is my favorite community to celebrate one of the most favorite members of our community, Pam Samuelson. And I was, as I was thinking about what to say, today, I was reminded by a quote from another legal Titan, Pauli Murray, who reflected on her own work, she provided some of the architecture for the arguments that were used in *Brown v. Board*. And she said, I've lived to see my lost causes found. And what she meant by that was that in thoughtful sort of deep ways, she managed to push the law towards taking into account things that had often been forgotten. Things that had been overlooked, articulated theories that eventually turned out to be guiding principles that literally changed the landscape of law. And I think, to me, that is the theme that I want to send her my observations on today about Pam. As a scholar, as a person, as a mentor and as a friend, because I think we can say similar things about Pam and her trajectory, not just as a deep thinker and scholar, but also as an advocate for balancing private law frameworks of IP with forgotten public law principles, things that looked at one time like last causes. So we all know so much about Pam's work in many areas. I want to draw your attention to one of my favorite aspects of Pam's work and that involves trade secrecy, and her work on First Amendment principles. So in some of this work, she describes a bit of an irony, that there are actually very few trade secret and First Amendment cases, but that actually the conflict between them is more than just a conflict between property principles and freedom of speech. But that it also incorporates larger challenges about information flows in the public interest. So in some of this early work, she wrote so passionately about how mass market licenses can foreclose information leakages that trade secrecy would actually allow, actually allow, right. And this to my knowledge is one of the most powerful articulations of the impending conflict between contract and intellectual property. And she also wrote about one of my favorite cases. Hopefully, it's some of your favorite cases to the case of *DVD Copy Control Association v. Andrew Bunner*. Young, stalwart activist right who posted source code of a content encryption program called DeCSS. Now I love this case for obvious reasons that relate to my own lost causy personality. It involves drama, it involves activism, it involves property out law like behavior, and it also involves a critical question about the lengths to which the law might protect that kind of activism. And so this is what she wrote, the Internet poses risks for many important societal interests, such as protecting children from pornography, protecting privacy and copyrights, preventing spam, spyware, fraudulent solicitations, and as the Supreme Court has observed, such risks are not so grave that the court should distort existing laws or First Amendment principles to make the rules stricter in cyberspace than in other realms. And so there you have it, a perfect example of Pam's groundbreaking skill set: clarity, value balancing, but also a meticulous observation. Trade secrets are not like every other kind of property. And even more significantly, the special circumstances of the web do not justify an exceptional set of rules that restrict First Amendment freedoms. While the general public might not be able to understand all of the fine details of encryption technologies, nuclear power plant safety systems, or complex chemical

processes she wrote, scientists who assess the implications of such technologies for the security and safety of the public are engaged in discourse on matters of public concern when they publish information about their safety, security, and the like. For a moment, think of how that one sentence actually envisions so much of what we're struggling with today regarding the opacity and inscrutability of AI. And here she provides us with a map and architecture that allows our lost causes, what we might think of is transparency, explainability, accountability. She empowers our lost causes to be found. And this is a thread in her work, which quietly and calmly strives to use existing cases and principles to bring doctrines in balance with one another. And this is even more notable because of what has been written about trade secrecy, since then, that early work was a tremendous debt to that architecture that she laid out. So she was writing about the public interest in access to newsworthy information through a lens that was entirely informed by public interest principles. And yet it was repackaged through this powerful, quiet kind of overlooked language of rethinking property and secrecy. And that's one of the incredible pieces I think that illustrates how public values are at risk when we over protect trade secret's property. And so we've seen some of this work continue to evolve and inform the work of scholars who have written about trade secret overclaiming, but others who have covered those areas. And all of us relying on this work, this thoughtful architecture about balancing private property with public interest goals. There's more than I could say about this version of Pam. Pam is powerful, constitutional advocate because of the way she weaves things like due process into her writings in subtle ways, questioning the breadth of injunctive relief. But I think this notion of generativity says so much about who she is, centrally locating the public interest in all of her projects, and then looking to First Amendment principles as a set of limited tools. So before I end today, I just want to pick up on another theme, and that is to know Pam is to know one of the most generous and thoughtful beings on earth. When I first came to Berkeley, I've got to say I was pretty intimidated. She's such a giant among us in the IP field, but I also came to discover that she is a giant of Cal. She does so much work behind the scenes here. And when I think of the impact that she's had on me, always taking an interest in my work, supporting our endless service obligations at Cal, and also celebrating the work of junior colleagues. We've been in many meetings over the years and I've always been impressed with her rigor, her ability to weave empathy through creative problem solving. And she's managed to do so much of that work both at Cal and in the world of IP. And her, she is a model of resiliency, and her resilience and care and her kindness have helped me through some very tough times. And I think often, to be honest, about another version of Pam. Pam is a younger scholar, as someone who wanted to be a lawyer and an advocate to get a top notch education. Pam is a junior law professor. Pam is a trailblazer in a world where so few looked and thought like her, and it's because of her that I look for the Pams in my students. Whose grit, brilliancy, brilliance, resiliency, gemlike qualities are beneath the surface. How can we as a community ensure that the next generation of Pams feel as supported as she made us feel? And that is the question that I think we should ask ourselves. And so last but not least, I just want to mention one other thing about Pam, which is if you have been lucky enough to receive her pictures, pictures of Pam, where she's traveling, pictures of her flowers in the garden when she knew I was having a tough time. She sent me pictures of birds, pictures of flowers, pictures of plants, and so whether it's in her emails or birds, flowers, sunset, her incisive, rigorous and generous comments on work, or her wonderfully dry sense of humor. Her unending gift of friendship and love she makes all of us who sometimes identify with those lost causes feel found in return.



Lydia Loren 11:56

So next, we'll hear from Daniel Gervais who's going to talk to us about generative AI.

D

Daniel Gervais 12:03

Yes, thanks, Lydia. And thank you for Molly and organizers. And I'm so honored to be here. I have to say, despite, or in addition to all the substantive comments up to now, I've never seen an event, an academic event, actually any event where people speak from the heart. Like that's happened since this morning. And I think Pam that says, maybe more than, than anything else. So I'm really honored to be here. So all of you know, I think that Pam is one of the few IP scholars who does it all. But one area that you might not suspect that she spent time on, is GIs. You said, what isn't he supposed to talk about AI? Yeah, I'm getting there. So GIs just to be clear, this is not a military abbreviation. I am talking about geographical indications. Years ago and I want to tell this story, Pam hosted a meeting at the extraordinary facility that she has in St. Helena and it changed the minds of people on GIs. So you might say, well, does that matter? Yes, a great deal. This issue matters because GIs are, the rules on GIs are an obstacle, a major obstacle to revisions of international IP rules and trade agreements. You have no idea how difficult and intricate and how much money is involved in GIs. So we had this chathouse rule meeting at St. Helena with experts from the U.S., Europe, New Zealand, Australia, WIPO kept by a memorable though possibly self interested dinner hosted by the Vintners Association. But I will say this, like so much of what Pam has done, it actually moved the needle. So this was this very, a moment I will always cherish and remember. But yeah, Molly asked me to talk about this very small, easy issue called generative AI. So I encountered a problem very early on as I was preparing. We heard about preemption this morning. Well, Pam published a very thorough, very convincing analytical overview like only she can do have the entire issue last July in science, and I agree with every word of it. So then I was okay. If you haven't read it, please do so. But I read it a few times, there's one thing she really doesn't talk about very much. So that left me my little window for today. So what I will do is talk about that issue, but I will try to do it based on some of Pam's insights in her scholarship. I will try to add a little novel twist on my own at the end. So the question is, is not infringement and it's not a fair use. Again, that's all completely dealt with in Pam's analysis, it's the issue of authorship. So, should AI companies have copyright in what the machine produces? Now we all know that the law does not grant copyright to macaques or cowtails or accidental recordings, or to all those great students, cases that our students love about, you know, these godlike entities that are supposed to hold the pen of some of the authors that go to court. But here the question is, does the machine have special status. And I considered Pam's article published in 1985 in the I think it was Pittsburgh Law Review, to be one of her most precious pieces of scholarship, although there would be many other credible candidates for that distinction. She wrote that granting copyright on machine produced content would "over reward the programmer, particularly in light of the fact that the programmer is no more able to anticipate the output than anyone else." And so what Pam put her finger on back then I think, is truly fundamental today, I developed that idea in my own scholarship and in a few papers in which I argued that productions that don't have a human cause here without going to the details and using something like proximate causation, that those productions should not get copyright protection. Pam was right then, as she is today. Now, I don't want to put words in her mouth. But I think the underlying principle that she captured in that piece was that I what I would call second degree intellectual property is highly suspect as a normative matter, and possibly dead on arrival as a doctrinal one. Second degree IP is what happens when someone creates something that is protected by IP, like software. And then that IP protected object autonomously produces something that looks like it could be protected by say, copyright or a patent. This explains what a machine produces is not the creator, the creation of the programmer or of the machine, or the person who owns the machine, or the people who train

the machine, or supervise the training, or a combination of that list, knowing that in many cases, these are different people, different entities. And then you would have a small issue of reformulating from scratch the issue of joint works because these people don't know each other and have no intent of creating something together. Small problem. So the word, the key word in Pam's quote, I think is over reward. Is there evidence of massive underinvestment in generative AI requiring additional exclusive incentives? Hmm. Now, many of you know that the Copyright Office put put this notice of inquiry, there was last count 7.3 billion comments. I think there are two people in North Korea who did not respond, but pretty much everyone else did. So I haven't been through all of them. But the one issue that comes up repeatedly in many of the comments is the issue of prompts. Right? So and I was thinking, Okay, I didn't discuss this with Pam on purpose. I said, okay, I'm just gonna go out on a limb and think, okay, what do we do with prompts, right? The idea that if the prompt is detailed enough, or long enough, or has sufficient originality, then, of course, that prompt maybes literary work, okay, fine. But then the argument, the second degree IP argument is if that prompt produces something that looks like it has originality, then that originality and then follow the genie in the bottle transfers to the you know, from the prompt to the output, so that the prompt engineers would become authors of the output. Now, I can actually imagine the situation where a very, very detailed prompt, or perhaps a series of very consecutive detailed prompts contains such specific expressions of ideas that are human creative choices based, that would be directly perceptible in the outputs. I'm not ruling it out entirely. But I find it again, very dubious, this argument of this kind of magical transfer of originality from the prompt. So here's a possible comparison that came up at a dinner yesterday. So I'm walking on the street. And there's a series of art galleries that specialize in say African art. And I'm looking for a painting that expresses some idea I have in my head. I want a painting with and pardon the cliché, elephants at sunset with trees in the distance, say. I'd make it a little bit more specific. There's a lake and there whatever. I might find that picture if I go to all the galleries. I'm not the author of that picture. I just found it, right. So with the fact that the machine generated options produces something that looks like something I want, it doesn't necessarily right make me an author. Now, applying this to patents and I for full disclosure, I published a short comment in Nature a few weeks ago in which I argued that providing patent protection for outputs that have no human inventorship is a bad idea. So you know, where I stand, but, but I can see a situation of second degree IP and over rewarding that applies here as well. So a machine could take a dataset of patents, say all the patents worldwide on this specific technology, maybe even all the scientific literature and then predict, you know, incremental innovations. New molecules, new version of an airplane wing or toothbrush, whatever it may be, it may even be able to predict utility. And because we have basically no utility standard, much left. So you could possibly get a patent on a lot of that. And we're one of the countries blessed with the absence of a formal experimental use exception. That's a joke. So with all that, I kind of wonder, and I go back to Pam's scholarship, where's the public interest? You know, patents are incentives, like copyright, they're made to generate investment. And again, I am looking for evidence of a lack of investment in this field. I'll take medicine, AI, medicine, so on. So basically, I was reading Pam's scholarship on this and I find it extraordinarily inspiring. I think the idea that there should be humans in the creative or inventor, invention process, is truly central here. There's a line that must be drawn between what the machine does autonomously and what people use the machine to do.

D

Daniel Gervais 21:58

And that's, that's a hard line to draw. But hey look, that's what we do. We draw hard lines, hard cases, borderline cases, all the time. So I said I would end with a novel idea. Just to prove my point. Some of you may have seen the piece I published just a few days ago and in Science,

about LLCs being operated entirely by AI. And I was trying to see, okay, how does that apply to IP. And so the idea behind the piece is that the alignment of AI with ethics, or some sort of code of ethics is not good enough. It doesn't work, what we want is machines that are actually aligned with the law on the books. And so I was thinking, imagine this just as a thought experiment, you create a company operated by an AI, and it produces 10,000 songs a day, or 10,000 incremental innovations in the particular field of day. Do we want the company to have exclusive rights on all that? So basically, what I read in Pam's scholarship, and maybe later, she'll tell me, I read it all wrong, is that IP is very, is a very human part of the law. It is meant for humans, because we are the public, in public interest. I think that's an idea that's so central to our scholarship. And I hope I read it the right way. I hope that AI won't fundamentally change that. But I do think that recognizing second degree IP as a source of potentially serious problem is a place to start, so that's kind of my little contribution. But I do want to end by, like so many others today, Pam, acknowledging your help and support through all these years. And you've, I can say, I think like almost everyone in the room, perhaps everyone literally, that you've changed my thinking on so many things. You've advanced it, you've made me a better scholar, so I can't thank you enough. Thank you.

L

Lydia Loren 23:59

All right, next we have Brewster Kahle.

B

Brewster Kahle 24:03

Yeah, Pam I mean, this sincerely. Thank you for the internet. Thank you for the internet that we know and we use. Thank you for the internet that let everyone in. An internet that had many winners, not just a few. It was not always clear that this was what was going to happen. So thank you, as a librarian, and as an old AI geek, starting in the 1980s, I was pretty clear on what I wanted the internet to be and how to make it unfold. I did not realize at the time I had so much to learn. And Pam helped every step of the way. The idea of putting information on the ARPANET and then the new internet before the web. I cannot tell you the number of people that said you can't do that. They won't, they're not going to allow it. I would scratch my head, who's they? I would later learn. Pam was planning ahead. Pam and the 90s, she said something to my wife that she'll never forget. She said Brewster is brave. You never want a lawyer to call you brave. But Pam was a quiet force to let the internet evolve into the library that many of us dreamed of. We did get online services, including the web, we got search engines, we got the Wayback Machine, a new television archive, but the fight over digital libraries continues. In contrast, Europe does not really have a search engine, nor Japan. Nowhere other than the United States has a Wayback Machine, a public television archive and now a vibrant AI industry. A force that helped all of this happen is Pam Samuelson. Pam brought balance to the forces. To paraphrase somebody down the road. To illustrate how far we have gotten in the 21st century. Maybe I can contrast it to how stuck we were in the 20th century. The idea of a universal library is an old one, a global brain, a library of Alexandria has been tried and reinvigorated over and over. During the 20th century, powerful people wanted to help make it happen using the technology of their day, microfiche and microfilm. Even as powerful a person as Vannevar Bush tried, he really tried, he didn't just write the paper on the Memex. He worked on it. So what happened" As best I can tell, that promise was largely stopped by the publishers. They even stopped using microfilm to make a temporary copy of a paper to be used for interlibrary loan. I mean, it sucked, right? And just contrast with what it is we've been able to

achieve. All of this may be because of Pam Samuelson. And a set of students and clinics that she and Bob have helped make happen. And her students have helped form our world, defending the public interest and building a meaningful balance. She also brought a balanced system for bringing books online with controlled digital lending. A story about the Google Book settlement. So the Google Books project, all for it, was cranking away, got sued. And then there was this quiet period. And then just after Barack Obama was elected, people were sort of happy about all this and the at least within my little community, and then the Google Books settlement text dropped. And it was long, it was hard. I tried to struggle through it to try to figure it out. And I just after an Electronic Frontier Foundation Board meeting, I kind of did a little cartoony thing. I went to Pam, I said "Help, it's a grab for the orphans. It's a grab to financialize the orphans." And Pam to her credit, she said, "I'm gonna have to read it, aren't I?" And I said, yes, please do. Yeah, but I've got the next two years all mapped out. Alright. So just read it. Just read it. And she said, Okay. And she, she did. So what ended up was a defense of text and data mining, being fair, which is completely important. So now we're being, now we're being drawn back into the fray with AI. And will we let the robots read. There's so much more to do. We should all continue and she should all continue her work to bring a balance to the forces. Thank you Pam.

L Lydia Loren 29:53

All right, so next we have David Hansen from the Authors Alliance starting with Carla, channeling Carla.

D David Hansen 30:02

Yes, thank you. I'll channel Carla. So before I read Carla's remarks, I guess I'll just say one of the things that I've learned from Pam, over the years and I've been really, I admire her for is that she recognizes that there are a lot of voices in the world that are important that don't get heard in powerful forums like before courts or before Congress. And she has just done a tremendous job in elevating those voices and giving them a voice. And so with that in mind, I'll read this from Carla kind of recounting the origins of the Authors Alliance. So Carla says the main thing that I wanted to share is an anecdote about Authors Alliance and how it began as a conversation over a cup of coffee with Pam. About 11 years ago on campus, Pam was sharing her concerns about how the Authors Guild claimed to represent authors at a class, as a class in the Google Books case. And I shared my research about how publishers in the late 18th century France, using the defense of authors rights as a media campaign, and smokescreen to promote and lobby for their monopolistic privileges. I shared that another view emerged in the 18th century echoed by Jefferson of the Civic author who championed limited rights, we decided that the public today needed a lobbyist who could bring that alternative tradition and voice to the legislative debate and into the courtroom. And who could claim competitive standing to represent authors in contrast to the Authors Guild. Voila, Authors Alliance was born a real Berkeley story. So, you know, early on for Authors Alliance, and actually before Authors Alliance, I had the chance to work with Pam, in relation to the Google Books suit. And I was just remembering, one of the things that we did was file some amicus briefs in that case, objecting to a variety of things. And one of the ways that we did that, as we write these briefs, and Jennifer Urban, she's here somewhere, worked with us on a brief where we were objecting to class certification. So the class had been approved. And, you know, the representatives were basically Authors Guild members who claimed to represent all U.S. authors who had a copyright

interest in a book that was digitized by Google, including many people who actually thought this project was a pretty good idea. And so we wrote this brief and it was focused on Rule 23A, I believe, of the Federal Rules of Civil Procedure, about class certification. Super esoteric, most authors can barely, you know, get into fair use much less Rule 23 of the Federal Rules of Civil Procedure. When we wrote this brief, and part of what I was doing was just emailing people and saying, do you want to sign on to this brief, and I had to kind of explain, like, what this was about. The number of responses that I got where people said, I don't really get it, but if Pam says that this is a good idea, I'll put my name on it, was like just over the top. And so I just looked up the brief. And the actual contents of the briefs were about 20 pages long. And we had a 25 page appendix of names of authors that said, yes, add my name to that, I support this. And to me, that was just a testament to how much trust there is in Pam, understanding these issues, navigating them and helping that community that otherwise doesn't have a voice to, to have a voice. So I emailed Pam, a few days ago and told her I was coming. And she said, great, you can recruit some members for Authors Alliance. Little did I know I'd get a stage and a microphone. So if you're not a member of Authors Alliance, join. All of you should be members. So thank you, Pam.

L

Lydia Loren 34:02

Well, David, if you weren't going to make that plug, I was. So I'm glad. If you're not a member of the Authors Alliance, become one today. So this leaves us some time for audience comments, questions, participation, and I think we have some microphones flying around the room, maybe hopefully. Great, wonderful.

P

Participant 34:21

I'm just going to begin by saying, if you ever get the chance to go to your mom's Festschrift, you should do it. I was one of the only 12 year olds in America, I think, who had detailed criticisms of the WIPO treaty in 1993. And so, while I loved it, this was my dinner table and I loved Pam was so smart and she was doing things. I wanted to be family business adjacent, right. I didn't want to be an IP professor necessarily once I kind of learned what it meant. So I like Brewster, am a librarian. And I got my first big project working with Google Books and HathiTrust, right about the same time Brewster gave Pam that settlement to read. And like Michael Corleone, I keep trying to get out. They keep bringing me back in again. So now I am in the family business of law in libraries. I'll just say that the biggest thing I learned from Pam, because I did get it at the dinner table, was we're talking about the wins, mostly today. But there were a lot of losses along the road. And I think for me, watching the resilience with which Pam recovered from the losses, and went on to go secure more wins was really inspiring. So I'm not sure if any of you remember the Orphan Works Project. But due to what I believe now to be an error in the code compiling it, we really screwed that one up. We screwed it up so bad that on NPR, I believe James Grimmelman said no one will ever be able to do this project ever again. And he was kind of right. And I got up and I wrote an article about, I call it, Failure is an Orphan. About what you do when you really blow it, when it blows up in your face. And I kept on going and we got some real wins. It was kind of funny being on the opposite side of the Google settlement with Pam as well, because we wanted to go through real bad. Lost that one. Anyway, I just, it's really, again, this has been a truly beautiful and I dare say surreal experience to see how I've shared this person with you all in ways that are as intimate as I would say, I've known her myself. So thank you.

L

Lila Bailey 36:38

Hi, I'm Lila Bailey. I work with Brewster at the Internet Archive. And I just wanted to just share my thanks to Pam for helping to bring to life, a legal theory that underpins a very important library practice, we now call it controlled digital lending. But before Pam convened one of her famous meetings, it didn't have a name. But it was something that Brewster was doing at the Internet Archive in partnership with lots of other libraries. And I went to well, actually, Dave Hansen was like, you know, it'd be really cool if the Internet Archive would just say, what the legal theory is behind what you're doing. There's lots of other libraries that want to do this, but they're nervous. And if you would just like write it down, a lot of people would come along. And so I was like, Oh, that's not something we normally do. But I went to Pam, and I said, Look, here's what we think. Do you think this is fair use? And do you think it would be worth writing something down? And Pam said, it's not the easiest fair use case I've ever heard. But it has something. And I want to convene a meeting. And so she did. And we did. And that resulted in a position statement and a white paper and now a fabulous lawsuit, heading to the Second Circuit, so yes, wonderful. So we are still fighting for that. But I did want to just say that Pam has just been such an incredible supporter of the work of libraries and disseminating information. And I also want to deeply thank Pam for reconnecting me to Brewster. So I am the head lawyer at the Internet Archive and for basically the whole history of the Internet Archive, there was no in house counsel there, so not a copyright one especially. And after I finished being a fellow here at Berkeley in the Samuelson clinic, Brewster was kind of losing his mind over the mass digitization, extended collective licensing thing that was going on at the Copyright Office. And Pam was like, you need to hire Lila. And, and that landed me my literal dream job that I've been doing ever since. And so you know, thank you for everything that you've done for me, for all of us. And I also want to share one more story which will just tell you how adorable Pam is and how much she loves people, especially people in this room. I remember when Dave Hansen interviewed for the role of I believe it was like digital library fellow at Berkeley. This was like 2011. I was one of his interviewers, because I was a fellow at the time. And after he left, I was in the room. It was me, Pam, I think Jason Schultz, and Pam just jumped up and down with joy. He's our guy. He's our guy. He's our guy. He's our guy. And it was the cutest thing I've ever seen. And here he is. Continue, yeah, so yay.

M

MacKenzie Smith 39:49

Hi, everybody. My name is MacKenzie Smith, and I'm a research librarian, not a lawyer, but I've worked at the intersection of libraries, technology, and law and IP, and public policy for many, many years. And like most of you, I will never forget the day I met Pam, because we were on a panel together at the Swiss consulate in Boston. And I'd never met her before, and I was working at MIT then. And the nice Swiss consul walked over to Pam and looked at her and said, so are you married to Paul Samuelson? And the look on her face was unforgettable. He turned it to stone. He turned to stone and slunk away realizing that he had said something terribly wrong. And I knew that I was going to love Pam Samuelson. And from that day on, you know, we've intersected over the years over open source software, over the Google Books project, over controlled digital lending, and now AI. And I just want to give a shout out on behalf of the entire research library community because Brewster said, thank you for the internet. And I would say that, you know, you infiltrated my tribe, got to know us, listened to us, and made it better. And in fact, I think a lot of research libraries just wouldn't exist today, if it weren't for a lot of the work that you've led. So thank you.

L Lydia Loren 41:16

Got a hand up over here, get that mic all the way around. Get your exercise. Get your steps in.

M Marti Hearst 41:28

Hi, everyone, my name is Marti Hearst and I'm Interim Dean of the School of Information. And I was trying to find the right spot to interject this but one of Pam's accomplishments, that's only been touched on here, was joining the School of Information in its early days. And as she was half in the law school and half in the I-school, and bringing that cyber law knowledge directly into education about technology. The School of Information is an interdisciplinary program. It has people from computer science, but also from sociology, law, economics, and many other fields. So Pam was the pioneering legal scholar at that in this program, and started a tradition that is probably even carried out in other I-schools, I think probably directly because of her influence of teaching people that are technology first about the role of law and how the two intersect. And so she's been highly influential in training legions of people that work at this intersection, I think some of them might be here in the room, I don't know if they're still here or not. Some prominent ones. So yes, some very prominent ones. So that was really bold move for her to take that on, and to be in these two different units at the same time. And I just think that it's something I wanted to give a shout out. I will say she also brought Bob to the I-school. Bob Glushko was a huge, huge influence on legions of students learning about whatever his passion of the day was, be it XML, be a document engineering. You know, he stayed in that space, but you know, really very passionate, and he was very entrepreneurial as well, started clinic like things as well, labs, and so on. And very much enriched our culture. So I just wanted to thank you for coming to the I-school, setting that precedent to both of you for being my friend and still my friend and part of my family. And, yeah, congratulations on all of your accomplishments.

L Lydia Loren 43:23

So Pam, has asked for the mic just for a story. I think.

P Pam Samuelson 43:30

This is true, I wasn't going to do it. But there was one moment during the Google Books project that I wanted to share. So I taught a one unit class in the spring semester, when there was about to be a proceeding about whether to approve the settlement or not. And I sort of filed many things in the Google Books case, you wouldn't even believe how hard I worked on this, okay, you just wouldn't believe it. But I worked really, really hard. And my main message was that the Authors Guild does not represent the interests of all authors, okay. They don't they, you know, they represent the people that they represent, but the idea that they represent, like all authors, especially all authors of books in research library collections, that's crazy. And so I actually showed up at the hearing, I was given five minutes in the hearing, about whether to approve the settlement. And yeah, I was like, France was before me and Germany was after me okay. But the best moment in that was that I found a sentence on, I think it was page 37 or page 39, of the brief that had been submitted by the publishers and the Authors Guild. That

said, the interests of open access advocates are plainly inimical to the interests of the class. And I said, this is what I have been saying all along. And plainly inimical was actually italicized, to say just how inimical they thought it was. And so I said, I rest my case.

L Lydia Loren 45:46

We do have a couple more minutes for more comments.

J John Mashey 45:53

So my name is John Mashey, I'm going to come at this from a rather orthogonal direction, in part to illustrate Pam's incredible versatility and ability to give great talks almost on the spur of the moment, but I've got to back up a little bit. The reason I know these folks, is that Bob used to work for me. Back at Bell Labs. I use this term loosely, I had a somewhat rambunctious applied research Group, and to which he fit very well. He's mellowed a lot since. Anyway, when the Bell System was about to break up, I moved out to Silicon Valley. And then eventually, these folks came on out and we reconnected. And I had a lot of interest in data, the big data terms usually ascribed to me, okay. And I was doing supercomputers and looking ahead to the huge amounts of information that would be flowing around. And it turned out that Pam and Bob and my wife and I attended a Foo Camp. And people know Foo Camps, okay, right? O'Reilly, okay up in Sebastopol. And Tim would invite an eclectic group, which is supposedly centered around software hackers, but it included a lot of different folks. And the way this works is it doesn't have a formal series of lectures, it's you put things up on a whiteboard and see who's interested. Right. And I was right then advising a couple of companies doing wireless sensor networks. And I put that up, okay. And then Pam, sort of joined with me and I talked about some of the technologies coming to it, of course, gathered data about everything. Remember, this is 2005, maybe something like that. Before there were iPhones? And what Pam then did was on the sort of spur of the moment, give a great talk about the privacy implications of having cheap sensors all over the place, gathering data about people, okay. And she gave examples, which was really great for a techie audience, right? OfbBe careful what you wish for. Because she went through these great examples like, gee, how about, I think that you had the one about the license plate readers as I recall on the bridge, okay. And like, what happens if that gets used in a lawsuit? Okay, right. And how about if you take a photo, and you capture somebody behind the glass in your house, okay, anyway you had a lot of great examples. But the thing that just impressed me, I had always I'd known for years, of course, that Pam was terrific when it came to technology and law. And this was a sort of whole different application of that, right? And if I hadn't already known to be impressed by her, that would have impressed me. Of course, I've also been impressed by the wonderful visits we've had to St. Helena and all the great veggies.

L Lydia Loren 49:06

Well, please join me in thanking our panelists on this panel.

M Molly Shaffer Van Houweling 49:17

Thank you so much, Lydia, especially for managing a panel that left a little extra time for Pam

Thank you so much, Lydia, especially for managing a panel that left a little extra time for Pam to share one of her own anecdotes, that was really special. So I am going to introduce our next two toasts, although because you have run so efficiently, we're not yet ready with our beverages to toast with, but they are about ready to be deployed for our enjoyment. I think that can happen actually. While we listen to our next toast, which I'm going to introduce, it's another video toast and it will be from Zahr Said, the Charles I. Stone Professor of Law at the University of Washington. School of Law. She's so wanted to be here with us, Pam, but you're really gonna like what she's recorded for us. So let me get that pulled up.

Z

Zahr Said 50:13

Good afternoon. My name is Zahr Said and I teach copyright law at the University of Washington in Seattle. I'm so sad not to be able to join you in person for Pam-fest, which looks like it's going to be an epic day long copyright party. Those words are probably redundant. And I'm just honored to be able to chime in virtually to celebrate this truly epic person. Pam, you have modeled for us how a person, and a woman no less, can be so many different things over the course of a still ongoing career. Not over yet. You have been, and you are, a scholar, a teacher, a public intellectual, a courageous advocate and critic, a pioneer, a philanthropist, a reformer, a MacArthur Genius, a mentor, and a friend. To learn from the many ways you have invested your considerable energy in so many important places in people and institutions. I've created a list so that we can learn from your investment. So here it goes, top six investment lessons gleaned from Pam Samuelson. Starting with six, it's a countdown. Invest in your reader. Make your scholarship worth your readers' while. Clusters, lists, patterns, highly suitable evidence. I've never read anything Pam's written that I haven't gone back to and cited or used in my teaching, and sometimes if I'm honest in like that hour of panic before teaching, especially in their early days, but I still never teach a merger without rereading Pam's work, and I teach merger twice a year. Make your work useful. Number five, invest in other disciplines. Pam has published work in the Journal of the ACM and she's made her work accessible and indeed indispensable for libraries, universities, for the software, entertainment and publishing industries. And for the public sector. That's a partial list. The point is that Pam has consistently taught people outside the academy about copyright law, thus fulfilling what I think is one of the most important purposes of our privileged role as academics. Four invest in the really hard problems. Sure, sometimes those hard problems are fun, like fair use and generative AI and generative AI as fair use. But this is copyright. More often than not, the really hard problems are incoherent, difficult, unpopular, unworkable, yet politically unassailable. Just generally overlooked, highly technical, and in the unkind eyes of some, kind of a buzzkill. Yet, in truth, these really hard problems make a huge difference in the lives of authors and creators and audiences, those most directly affected by copyright. Pam has made change through her investments in these difficult problems, in a way that is a model for all of us. Number three, invest in people. Nobody in IP law, and this is a generous community. Nobody has invested more in the people in our community than Pam, and especially invested in women. Pam has tirelessly mentored scholars in our field and read their work, our work and cited us and invested in our whole community without regard to status or title or home institution. And she's done so without fanfare, and ego. She keeps writing and she keeps reading and she keeps learning. People flocked to Pam because of her brilliance, but also her kindness. I want to add also her modesty, she's probably quite bored with this list of how great she is, but hold on for us for a minute more. Beyond investing in our academic community, Pam has generously invested in the next generation of women in tech. By creating the Dovie Samuelson Endowed Scholarship to support women in STEM education at the University of Washington, providing full ride scholarships for outstanding female scholars who wish to study science or engineering. It's

named after Pam's beloved grandmother, a piano teacher who sounds like she was an amazing woman in her own right. That brings me to number two. Invest in joy. Work on what brings you joy, to be sure, but also, as Pam does. Take breaks from work. Go on vacation, go to the symphony, stay home and celebrate your glorious garden. Pam's remarkable productivity comes it seems, because of her investment to a life filled with joy rather than at its expense. And that's a lesson worth learning from her life and example. Finally, Number one. And this may be a funny thing for a copyright person to say, but here it is, number one, invest in hope. At times it can be difficult for us. For those of us steeped in copyright law to not get cynical about it. We see how copyright works after all, with respect to vote halls, jukeboxes, and even software. But Pam isn't cynical. She finds where the law can change and she presses right there. She finds the people who can make change and she supports them, as they said about changing it. Or she makes the change herself. We've seen that right? You all know what I'm talking about. By investing in hope Pam helps us imagine a better future in this area of law that matters so much to all of us gathered here today to honor Pam. For your unbelievable legacy and your still ongoing investments that aren't over yet. On the page, in the classroom, in the courtroom and over the dinner table. Thank you, Pam and cheers.

M

Molly Shaffer Van Houweling 56:01

Our next toaster is a valuable student leader, Nicole. Come on up. Nicole Boucher is symposium editor of the Berkeley Journal of Law and Technology. We've already heard kudos for the journal that published one of the two special volumes devoted to one of Pam's first and most important conferences here at Berkeley. The Berkeley Journal of Law and Technology will again be publishing a special issue devoted to this event. And Nicole is here to offer a toast on behalf of Berkeley Law students.

N

Nicole Boucher 56:36

I've been told to put this there. Hello, everyone. Thank you for coming today. My name is Nicole Boucher, symposium editor for BTLJ. I come here today to speak on behalf of all the Berkeley Law students who've worked with and been taught by Professor Samuelson. I want to first thank Professor Samuelson for all she has done for students over the years, and the time she has taken to help students with their own projects. I wanted to use this time to share some of the stories I've gathered from current Berkeley Law students about their interactions with Professor Samuelson. In the words of one current student, she is one of the hardest working, most proactive professors in the law school, who genuinely loves teaching copyright and always tries to make class fun, and a little theatrical. She doesn't have a lot of time to give because she's so busy, but she still makes time for students and really engages with the questions and ideas you bring to her. She's intimidating at first, but she's actually a very kind person who really wants to get to know her students, and is clearly beloved by all her colleagues as well. Without her initiative and planning, it's safe to say that the BCLT symposiums at Berkeley Law would not have happened. In the words of another student. I feel so fortunate to have gotten to know Professor Samuelson. She is a true powerhouse in copyright, but is also one of the kindest and most caring professors I've had. I think we all echo the sentiments and appreciate how much time she takes to not only work at Berkeley Law, but also outside as well. Now turning to me, I first met Professor Samuelson when I took copyright last semester, and it was honestly my favorite class. Not only did Professor Samuelson lighten every class with her energy, but she also brought to life, the densest subjects. I still remember

her sharing with us how we should not be scared of software as she had to for litigation deep dive into one of the most obscure industries. She explained that if she could learn about that we could learn about software. For me, it's honestly one of the reasons that I began to pursue a career and consider going into technology transactions. Then this semester, she's been more than welcoming for me, answering sometimes my silly questions about copyright law for my student note on the Warhol case. I truly appreciate all the time that you take to listen to me and answer my questions. I think I speak for all Berkeley Law students when I say thank you for continuing to illuminate the next generation of lawyers with your knowledge and experience. Thank you for all you bring to Berkeley Law as a professor, mentor, and creator. We appreciate the time you take for students and effort you spend into developing Berkeley Law IP and technology curriculum. Thank you so much, and we look forward to seeing all you continue to do as a professor.

M

Molly Shaffer Van Houweling 59:35

Thank you so much, Nicole, for that toast and for everything you do through leadership of BTLJ. And thanks in advance for publishing the issue that's going to come out of this symposium. Nicole actually organized another major fall symposium just a week or so ago. And so we're especially grateful, Nicole, that you were able to make time to be here today. Okay, let me give you your marching orders first. Lydia already thanked the panel but I want to thank Lydia as well and the rest of the group for our last great session. So we now have a break all the way until 3:00, so it's a bonus break, lots of time to do whatever you need to do, but do it because after that, we're going to have two panels and a toast and we're going to have a marathon until we arrive at cake, which is the grand finale. So make the phone calls you need to make, get hydrated, and then we'll return here at 3:00.