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Cover Page Footnote

These summaries are brought to you by the staff and editors of the Fordham Intellectual Property, Media & Entertainment Law Journal, Volume XXXII. The Journal would like to extend a very special thank you to Gina Boone, IPLJ's Volume XXXII Symposium Editor, for organizing this twenty-ninth Annual Symposium. For their help creating these summaries, the Journal would like to thank the Symposium Committee: Ashley Qamar, Taylor Gordon, Sydney Heiden, and Michael Hirt for their help editing the final content of these summaries, as well as Caroline Vermillion, Managing Editor of Volume XXXII, and Laura Rann, Editor-in-Chief of Volume XXXII, for compiling and finalizing the summaries. Finally, the Journal would like to thank the Symposium's Speakers, Panelists, and Moderators. Video of the entire Symposium can be found on the Fordham Intellectual Property, Media & Entertainment Law Journal's website: <http://www.fordhamiplj.org/2021/09/11/the-29th-annual-iplj-symposium-ip-interrupted-october-8-2021/> [<https://perma.cc/FLX6-ZDL4>].

IP Interrupted: Diverse Voices in Intellectual Property

Fordham Intellectual Property, Media & Entertainment Law Journal*

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INTRODUCTION

On October 8, 2021, the Fordham Intellectual Property, Media & Entertainment Law Journal hosted its twenty-ninth annual symposium, *IP Interrupted: Diverse Voices in Intellectual Property*. Over the course of day, hundreds of students, professors, and practitioners joined the virtual event to engage in meaningful discussion about diverse representation within the intellectual property legal field. Alongside an insightful keynote address, panelists and faculty moderators—representing diverse backgrounds, identities, and experiences—grappled with necessary but challenging questions, ideas, and concerns spanning myriad intellectual property industries.

I. OFFLINE: THE INTERSECTION BETWEEN DATA AND CYBER CIVIL RIGHTS

Moderated by Mavis Fowler-Williams,¹ the first Panel—“Offline: The Intersection Between Data and Cyber Civil Rights”—addressed the interplay between data and cyber civil rights. The panelists included: Maurice Dyson, Professor of Law at Suffolk University Boston;² Carrie Goldberg, founder of C.A. Goldberg, PLLC, author of *Nobody’s Victim: Fighting Psychos Stalkers, Pervs & Trolls*, Cyber Civil Rights Initiative Board Member (2016–2019) and Advisory Board Member (2019–present);³ Margaret Hu, Professor of Law and International Affairs at Penn State Law University;⁴ and Ari E. Waldman, Professor of Law and Computer Science

¹ *Mavis Fowler-Williams*, FORDHAM UNIV. SCH. OF L., https://www.fordham.edu/info/24260/legal_writing_faculty/5939/mavis_k_fowler-williams [<https://perma.cc/K85W-ZMMT>]; *Mavis Fowler-Williams*, COLUMBIA L. SCH., <https://www.law.columbia.edu/faculty/mavis-fowler-williams> [<https://perma.cc/M2FP-H936>].

² *Maurice Dyson*, SUFFOLK L. SCH., <https://www.suffolk.edu/academics/faculty/l/b/maurice-r-dyson> [<https://perma.cc/73KZ-GP58>].

³ *Carrie Goldberg*, C.A. GOLDBERG, <https://www.cagoldberglaw.com/about/carrie-goldberg/> [<https://perma.cc/7WK6-XXQ5>].

⁴ *Margaret Hu*, PENN STATE L., <https://pennstatelaw.psu.edu/faculty/hu> [<https://perma.cc/JWE4-5F8N>].

and Faculty Director for the Center for Law, Information and Creativity (CLIC) at Northeastern University.⁵

Professor Maurice Dyson began his segment by providing an overview of the sheer power of algorithmic technology and its vast potential to inflict injustice on society. He spoke about how algorithmic technology has altered the course of history by manipulating geopolitical relations through the spread of misinformation.⁶ He specifically mentioned algorithmic technology's influence on the Brexit vote, the coup in Myanmar, lynchings in India, and the outcome of the 2016 U.S. presidential election.⁷ This technology has the ability to disseminate massive amounts of disinformation and misinformation, causing substantial harm to society without effective oversight or audit trails.⁸

Dyson then shifted to a discussion regarding how facial recognition algorithms “punish poverty” in the context of the criminal justice system. Data upon which these algorithms rely are grounded in dubious policing practices that employ a “broken windows” theory of law enforcement.⁹ Accordingly, algorithms entrench these questionable practices.¹⁰ For example, facial recognition technology has been used to identify protesters as “dangerous” in order to arrest

⁵ Ari E. Waldman, N.E. SCH. OF L., <https://law.northeastern.edu/faculty/waldman/> [<https://perma.cc/VCN5-Z3Y2>].

⁶ Sarah Kreps, *The Role of Technology in Online Misinformation*, BROOKINGS 1, 1 (2020), <https://www.brookings.edu/wp-content/uploads/2020/06/The-role-of-technology-in-online-misinformation.pdf> [<https://perma.cc/Z8G2-V9V6>] (“[T]he use of big data and machine learning about user behavior to manipulate public opinion, allowed social media bots to target individuals or demographics known to be susceptible to politically sensitive messaging.”).

⁷ Maurice R. Dyson, *Algorithms of Injustice & the Calling of Our Generation: The Building Blocks of a New AI Justice in the Technological Era of Global Predatory Racial Capitalism*, 5 HOW. HUM. & C.R. L. REV. 81, 83–84 (2021).

⁸ *Id.* at 92.

⁹ Caroline Haskins, *Dozens of Cities Have Secretly Experimented with Predictive Policing Software*, VICE (Feb. 6, 2019, 10:00 AM), <https://www.vice.com/en/article/d3m7jq/dozens-of-cities-have-secretly-experimented-with-predictive-policing-software> [<https://perma.cc/34S4-NCUW>].

¹⁰ Will Douglas Heaven, *Predictive Policing Algorithms Are Racist. They Need to Be Dismantled*, MIT TECH. REV. (July 17, 2020), <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/> [<https://perma.cc/2D3N-9YZ7>].

them or find outstanding warrants.¹¹ Concerningly, a cradle-to-prison algorithmic fate is being imposed on students in schools throughout the United States.¹² This technology captures student's personal information, such as addresses, educational backgrounds, marital status of family members, and much more—information over which students have little control.¹³ Further, technology companies' risk assessment scores use algorithmic formulas with no transparency and little efficacy predicting recidivism rates, often resulting in incarceration.¹⁴

Dyson relayed a personal experience to exemplify the harms of algorithmic law enforcement. He described a circumstance in which he and a family member were misidentified by facial identification technology, resulting in a traumatic stop by police. Dyson emphasized that there is no reason to believe this technology should remain unchecked. Companies rely on trade secret law to operate under a “black box” of secrecy.¹⁵ The public is unable to assess the criteria law enforcement uses when determining who might be “dangerous.”¹⁶ However, intellectual property rights cannot justify the erosion of constitutional due process rights.¹⁷ Defendants are

¹¹ Shira Ovide, *A Case for Banning Facial Recognition*, N.Y. TIMES, <https://www.nytimes.com/2020/06/09/technology/facial-recognition-software.html> [https://perma.cc/MA2H-PP6S] (Aug. 1, 2021).

¹² Lori Bezhler, *We Should Be Alarmed by Schools' Creepy Plan to Monitor Students*, GUARDIAN (Oct. 18, 2019, 6:00 AM), <https://www.theguardian.com/commentisfree/2019/oct/18/school-shootings-surveillance-police-database-privacy> [https://perma.cc/8Z8L-KY3C].

¹³ See, e.g., *id.*; Emma Nelson, *St. Paul Area Leaders Nix Data-Sharing Agreement*, STARTRIBUNE (Jan. 28, 2019, 8:29 PM), <https://www.startribune.com/st-paul-ramsey-county-school-district-nix-data-sharing-agreement/504977992/> [https://perma.cc/8N2K-PE88]; Shea Swauger, *The Next Normal: Algorithms Will Take Over College, from Admissions to Advising*, WASH. POST (Nov. 12, 2021, 9:07 AM), https://www.washingtonpost.com/outlook/next-normal-algorithms-college/2021/11/12/366fe8dc-4264-11ec-a3aa-0255edc02eb7_story.html [https://perma.cc/G7XH-84H2].

¹⁴ See Karen Hao, *AI Is Sending People to Jail—and Getting It Wrong*, MIT TECH. REV. (Jan. 21, 2019), <https://www.technologyreview.com/2019/01/21/137783/algorithms-criminal-justice-ai/> [https://perma.cc/MRC8-VWRG].

¹⁵ See Jessica M. Meyers, *Artificial Intelligence and Trade Secrets*, AM. BAR ASS'N (Jan./Feb. 2019), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2018-19/january-february/artificial-intelligence-trade-secrets-webinar/ (last visited Feb. 11, 2022, 7:40 PM).

¹⁶ See *id.*

¹⁷ U.S. CONST. amend. VI.

guaranteed the right to confront their accuser;¹⁸ but when the “accuser” is a trade-protected algorithm, no such right can be exercised.¹⁹

Dyson maintained that, today, “it is not so much the Constitution, or the regime of law that determines the allocation of your life opportunities, it is in fact your risk assessment score and your algorithmic score that creates a digital caste system, a technical Jim Crow.”²⁰ He argued that risk assessment technology categorizes people by their data—often data over which individuals have no control—resulting in a digital hierarchy.²¹ When technology, rather than the law, can and does dictate individuals’ opportunities and access to rights, society operates under a regime of rhetoric rather than rights.²²

Professor Margaret Hu spoke next. She began by discussing the shift in governance after 9/11 toward increased expansion and

¹⁸ *Id.*

¹⁹ See *Defense Lawyers Want to Peek Behind the Curtain of Probabilistic Genotyping*, AM. BAR ASS’N (Dec. 2017), https://www.abajournal.com/magazine/article/code_of_science_defense_lawyers_want_to_peek_behind_the_curtain_of_probabil/P1 [<https://perma.cc/M4XX-WRXC>] (discussing *People v. Chubbs*, No. B258569, 2015 WL 139069 (Cal. Ct. App. Jan. 9, 2015), and stating that “[t]he appeals court said that [the defendant’s] stated reasons to access the source code, even under protective order, did not outweigh trade secret protections”). When asked what the “biggest issue is with access to source code,” Richard Torres, attorney in the DNA unit of the New York Legal Aid Society, answered, “[i]t’s a confrontation issue.” *Id.* He argues that algorithms are forms of “speech that make[] a claim against a defendant—so the defense [should have] a right to confront and question the algorithm, not just the scientist who made it.” *Id.*

²⁰ All direct quotations from Panelists can be found in the video recording of this symposium. See *The 29th Annual IPLJ Symposium “IP Interrupted: Diverse Voices in Intellectual Property,”* FORDHAM INTELL. PROP. MEDIA & ENT. L.J. (Oct. 8, 2021), <http://www.fordhamiplj.org/2021/09/11/the-29th-annual-iplj-symposium-ip-interrupted-october-8-2021/> [<https://perma.cc/FLX6-ZDL4>] [hereinafter *Symposium Video*].

²¹ For discussion regarding risk assessment technology used in law enforcement settings, see Alex Chohlas-Wood, *Understanding Risk Assessment Instruments in Criminal Justice*, BROOKINGS (June 19, 2020), <https://www.brookings.edu/research/understanding-risk-assessment-instruments-in-criminal-justice/> [<https://perma.cc/A99J-KC66>].

²² See *id.*; see also Tim Lau, *Predictive Policing Explained*, BRENNAN CTR. FOR JUSTICE (Apr. 1, 2020), <https://www.brennancenter.org/our-work/research-reports/predictive-policing-explained> [<https://perma.cc/EB4X-U8NZ>].

acceptance of data and artificial intelligence analytics, particularly within the context of border security and counterterrorism.²³

Like Dyson, Hu expressed concerns about cybersurveillance and Constitutional challenges that could arise as a result of the United States adopting a form of governance based in this data architecture.²⁴ She emphasized that under the current data architecture, it is increasingly difficult to understand the ways in which power is centralized algorithmically. Not only is this data used for matters of policing and national security, but also for assessing, categorizing, and classifying individuals in a new form of discrimination where “race” is being replaced with “risk.”²⁵

Hu concluded by highlighting another problem caused by artificial intelligence. She explained the ways data can alter our perception of reality, creating parallel universes of information where people are no longer able to discern truth from falsity.²⁶ She noted that the true historical moment—the warning of the January 6, 2021

²³ See, e.g., Madeleine Carlisle, *How 9/11 Radically Expanded the Power of the U.S. Government*, TIME (Sept. 11, 2021, 7:00 AM), <https://time.com/6096903/september-11-legal-history/> [<https://perma.cc/3GD5-492B>] (“Congress passed sweeping legislation. The government profiled and watched its own citizens, ushering in a new era of mass surveillance. . . . Many units of DHS, including . . . Customs and Border Protection (CPB), were given broad discretion and deep resources to enforce immigration laws both at the border and at the interior of the country.”); see also Albert Fox Cahn, *20 Years After 9/11, Surveillance Has Become a Way of Life*, WIRED (Sept. 9, 2021, 7:00 AM), <https://www.wired.com/story/20-years-after-911-surveillance-has-become-a-way-of-life/> [<https://perma.cc/2435-54AR>].

²⁴ See generally, e.g., Jennifer M. Paulson, Comment, *Cyber Insecurity: Constitutional Rights in the Digital Era*, 41 S. ILL. U. L.J. 261 (2017) (addressing constitutional implications of cybersurveillance under the First Amendment, and the Due Process Clauses of the Fifth and Fourteenth Amendments).

²⁵ See Lau, *supra* note 22; see also Lydia X. Z. Brown & Ridhi Shetty, *Critical Scrutiny of Predictive Policing Is a Step to Reducing Disability Discrimination*, CTR. FOR DEMOCRACY & TECH. (July 23, 2020), <https://cdt.org/insights/critical-scrutiny-of-predictive-policing-is-a-step-to-reducing-disability-discrimination/> [<https://perma.cc/2DXP-SS3J>] (“[P]redictive policing programs use zip code and other proxies for race and income as data points . . .”).

²⁶ See Janna Anderson & Lee Rainie, *The Future of Truth and Misinformation Online*, PEW RSCH. CTR. (Oct. 19, 2017), <https://www.pewresearch.org/internet/2017/10/19/the-future-of-truth-and-misinformation-online/> [<https://perma.cc/LPT9-5ED2>].

attack on the U.S. Capitol²⁷—should be a wake-up call to recognize the magnitude of this threat.

Following Hu, Professor Ari E. Waldman discussed how data-driven technology has imposed particular burdens on queer²⁸ people and the severe psychological, emotional, and physical violence that results from such burdens.²⁹ Waldman asserted that advocacy has been focused on other issues, such as marriage equality, which leaves some groups out of the conversation entirely when it comes to data-driven harms. Specifically, the queer community has been disproportionately victimized by data-driven technology discrimination, particularly as it relates to nonconsensual pornography and cyber-sexual violence.³⁰ For example, data collection can be used to share intimate pre-transition images of somebody as a form of emotional violence.³¹ Waldman explained the inherent difficulty in

²⁷ See Scott MacFarlane & Cassidy McDonald, *January 6 Timeline: Key Moments from the Attack on the Capitol*, CBS NEWS, <https://www.cbsnews.com/live-updates/january-6-capitol-riot-timeline-key-moments/> [<https://perma.cc/V2AD-JDCG>] (Jan. 7, 2022, 7:35 AM).

²⁸ While this community is sometimes referred to as the LGBTQ+ community, throughout his discussion, Professor Waldman used the word “queer” to identify this community. In writing this Review, the Journal wanted to maintain the authentic language used by our Panelists. See *What Does Queer Mean?*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/teens/sexual-orientation/what-does-queer-mean> [<https://perma.cc/59KG-QVSU>] (“Queer is a word that describes sexual and gender identities other than straight and cisgender. Lesbian, gay, bisexual, and transgender people may all identify with the word queer. Queer is sometimes used to express that sexuality and gender can be complicated, change over time, and might not fit neatly into either/or identities, like male or female, gay or straight. The word “queer” has history to it that’s hurtfulBut more and more people use the word with pride to identify themselves.”).

²⁹ See generally Ari E. Waldman, *Safe Social Spaces*, 96 WASH. U. L. REV. 1537 (2019); Ari E. Waldman, *Amplifying Abuse: The Fusion of Cyberharassment and Discrimination*, 95 B.U. L. REV. ANNEX 83 (2015).

³⁰ Ari E. Waldman, *Law, Privacy, and Online Dating: “Revenge Porn” in Gay Online Communities*, 44 L. & SOC. INQUIRY 987, 995 (2019).

³¹ See Thomas Page McBee, *Please Don’t Google Trans People’s “Before” Photos*, OUT (Dec. 21, 2018, 10:02 AM), <https://www.out.com/news-opinion/2018/12/21/please-dont-google-trans-peoples-photos> [<https://perma.cc/GUM7-MV3H>]; see also *Taking Down Old Pictures*, TRANS YOUTH EQUAL. FOUND. (July 7, 2021), <http://www.transyouthequality.org/tyef-blog/taking-down-old-pictures> [<https://perma.cc/ZZ4S-D9ML>] (“Many trans, non-binary, and gender non-conforming youth may feel deeply uncomfortable having pictures of themselves pre-transition aroundThese pictures can trigger a youth’s gender dysphoria, reminding them of a painful past life which wasn’t right for them.”).

pinpointing harms under our current privacy jurisprudence and highlighted the challenges related to nonconsensual pornography. For instance, he stated it is difficult to hold a person accountable for violating another's trust by sharing intimate photos of them.³²

Waldman emphasized the need for additional research, not just in the context of online harassment, but also police brutality and misinformation. Waldman noted that flagrant violations of the Fourth Amendment too often leave queer people out of the conversation. Specifically, data-driven algorithms propagate misinformation about transgender people online, which seeps into politics and produces real-world consequences.³³ For example, over one hundred anti-transgender bills have been proposed in various states, many of which prohibit transgender women from participating in sports and prevent transgender youth from obtaining necessary gender-affirming procedures.³⁴

Carrie Goldberg, the final speaker, shared some of her professional experiences representing victims of image-based abuse, intimate partner violence, online stalking, sextortion, and more. She succinctly explained that she solves problems by suing technology companies. At the outset of her career, she had a much more conciliatory relationship with technology companies. She was engaged and interested in working alongside these companies to help create beneficial laws, terms, and services on their platforms. However, over time she came to realize that, with a few exceptions, these major companies are extremely hostile to individuals. She expressed her impression that most people believe some level of society's

³² See generally Ari E. Waldman, *Privacy as a Trust: Sharing Personal Information in a Networked World*, 69 U. MIA. L. REV. 559 (2015).

³³ See Baird Campbell, *Anti-Queer Violence, Bearing Witness, and Thinking with Algorithms on Social Media*, PLATYPUS: THE CASTAC BLOG (June 27, 2019), <https://blog.castac.org/2019/06/anti-queer-violence-bearing-witness-and-thinking-with-algorithms-on-social-media/> [<https://perma.cc/3XRT-797R>]; see also Liam Knox, *Media's 'Detransition' Narrative Is Fueling Misconceptions, Trans Advocates Say*, NBC NEWS (Dec. 19, 2019, 8:23 AM), <https://www.nbcnews.com/feature/nbc-out/media-s-detransition-narrative-fueling-misconceptions-trans-advocates-say-n1102686> [<https://perma.cc/3KJL-2UY6>].

³⁴ Ivette Feliciano, *Pride: 2021 Has Set a Record in Anti-Trans Bills in America*, PBS (June 6, 2021, 12:58 PM), <https://www.pbs.org/newshour/show/pride-2021-has-set-a-record-in-anti-trans-bills-in-america> [<https://perma.cc/S48N-ZUYV>].

safety and privacy should be sacrificed in the name of what they perceive to be “progress.” In actuality, it is not progress, but bloated profits and concentrated power.

Goldberg stated that when technology companies experience data breaches, it causes real harm, whether it be in the form of stalking or humiliation.³⁵ Some of her clients are victims of child sexual abuse and sex slavery, and their lives were ruined by such breaches. Goldberg described representing a group of young girls who responded to deceptive bikini model recruitment advertisements, but instead were raped and forced to perform in pornography, the footage of which was disseminated alongside their personal information to thousands online.

Goldberg also mentioned a recent quote by Instagram CEO Adam Mosseri, comparing deaths from car accidents to harm caused by social media to suggest the value brought by each outweighed the associated harms.³⁶ Goldberg emphasized this type of rhetoric is precisely the problem, pointing out that—unlike big tech—the auto industry is indeed heavily regulated.³⁷ She further noted that marginalized communities bear the brunt of this harm, and provided two examples: a seventeen-year-old was murdered on Instagram live by a perpetrator whose profile was not removed for a full twenty-four

³⁵ See *Domestic Violence and Privacy*, ELEC. PRIV. INFO. CTR., <https://archive.epic.org/privacy/dv/> [<https://perma.cc/6B35-MJXQ>] (“Domestic violence victims have high needs for privacy, as they are already the target of an abuser, and often need to keep data from them. This abuse can also involve privacy violations such as surveillance, monitoring, or other stalking. . . . This aggressor is able to take advantage of the general lack of protection for personal information in our society.”).

³⁶ Kenneth Garger, *Instagram Chief Takes Heat for Bizarre Analogy Defending Social Media*, N.Y. POST, <https://nypost.com/2021/09/16/instagram-chief-adam-mosseri-ripped-for-analogy-defending-social-media/> [<https://perma.cc/ENN6-NW5M>] (Sept. 16, 2021, 11:23 PM).

³⁷ *Compare The Value and Challenges of Regulating Big Tech*, HARVARD KENNEDY SCH. (Dec. 16, 2020), <https://www.hks.harvard.edu/faculty-research/policy-topics/business-regulation/value-and-challenges-regulating-big-tech> [<https://perma.cc/V6MU-B4F9>] (outlining the current state of regulation in Big Tech), with *What Regulations Affect the Automotive Sector?*, INVESTOPEDIA, <https://www.investopedia.com/ask/answers/042015/how-much-impact-does-government-regulation-have-automotive-sector.asp> [<https://perma.cc/4R8M-57P5>] (Oct. 19, 2021) (discussing the “series of rules and regulations imposed by the government” that affect the automotive industry).

hours;³⁸ and the user of a gay dating app whose ex-partner impersonated him online was subjected to over one thousand men approaching him in person to fulfill a “rape fantasy” he never solicited.³⁹

Goldberg concluded by posing a question: why do some deserve privacy while others do not? Throughout her career, Goldberg realized how powerless users of technology are in achieving justice from the big technology companies, noting that this was one of the reasons she decided to pursue a career in law and ultimately opened her own practice.⁴⁰

Following the initial conversation, attendees were invited ask questions (“Q&A”). During this Q&A portion, the panelists agreed that more transparency would be helpful in counteracting the current problems with technology but would not fix the problems entirely. They also agreed that it is not necessary to know the precise ways companies use algorithmic data to appreciate the resulting harms. Further, the discourse that emphasizes more transparency as a remedy for data-driven harms has the collateral effect of legitimizing such uses, instead of questioning why companies are fundamentally entitled to an individual’s trust and personal information.

When asked whether a notice-and-takedown requirement would be a useful amendment to Section 230 of the Communications Decency Act,⁴¹ Goldberg responded that such an amendment, akin to the Digital Millennium Copyright Act (“DMCA”),⁴² would be helpful, but that it has been widely and strongly criticized by lobbyists.⁴³

³⁸ See Kelly-Leigh Cooper, *Bianca Devins: Family Sue NY Officials Over Video Footage of Murdered Teen*, BBC NEWS (July 16, 2021), <https://www.bbc.com/news/world-us-canada-57867813> [<https://perma.cc/G32P-5JCX>].

³⁹ Carrie Goldberg, *Winning Through Losing*, AM. BAR ASS’N (Dec. 18, 2020), <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2021/december/winning-through-losing/> (last visited Feb. 11, 2022, 8:51 PM).

⁴⁰ *Carrie Goldberg*, *supra* note 3.

⁴¹ 47 U.S.C. § 230.

⁴² Digital Millennium Copyright Act § 103, 17 U.S.C. § 1201.

⁴³ See, e.g., Aaron Mackey, *Even with Changes, the Revised PACT Act Will Lead to More Online Censorship*, ELEC. FRONTIER FOUND. (Mar. 26, 2021), <https://www.eff.org/deeplinks/2021/03/even-changes-revised-pact-act-will-lead-more-online-censorship> [<https://perma.cc/AR8L-TPJC>] (discussing the ways in which the proposed PACT Act—which would create a notice and takedown regime to 47 U.S.C. § 230—would “creat[e] a

Nonetheless, Section 230 is likely broader than intended and was enacted in the internet's infancy.⁴⁴ While its current form is adequate for certain situations, such as defamation, it is grossly lacking in protection for the types of clients Goldberg represents.⁴⁵ Dyson agreed that such an amendment would be helpful, but to a lesser extent since the core issue revolves around algorithmic functionality and the foreseeable harms *caused* by that algorithm. Nonetheless, Dyson believes a notice-and-takedown amendment could be a good place to start.

Next, the panelists were asked how social media users can protect their privacy and data. Waldman pointed out that asking how social media users can protect their data and privacy implies it is the users' responsibility to protect themselves—or that companies have given users the tools to adequately do so in the first place. Instead, Waldman believes the public should demand that companies protect their users. Dyson added that placing the burden of protection on consumers is both ineffective and inefficient, analogizing the issue to climate change: on an individual level, a person can only do so much to reduce their carbon footprint. Instead, actions must be taken to change the calculus and incentives involved with the actors inflicting large-scale harm on society.

Finally, the panelists agreed that more speech does not necessarily counteract hate speech. For example, Goldberg pointed out that more speech does little to protect her clients. Dyson emphasized that in the age of misinformation, more vetted, reliable speech should be the goal given that democracy is premised on an informed citizenry.

legal regime that rewards platforms for over-censoring users' speech," and noting that the Electronic Frontier Foundation "remains opposed to the bill").

⁴⁴ See Lauren Feiner, *Republican Bill Seeks to Limit Social Media Liability Protections Without Getting Rid of Them*, CNBC, <https://www.cnbc.com/2020/09/10/republican-bill-seeks-to-limit-section-230-protection-for-tech-platforms.html> [https://perma.cc/8VS2-8BLM] (Sep. 10, 2020, 11:41 AM).

⁴⁵ See Daisuke Wakabayashi, *Legal Shield for Social Media Is Targeted by Lawmakers*, N.Y. TIMES, <https://www.nytimes.com/2020/05/28/business/section-230-internet-speech.html> [https://perma.cc/TEV8-9LRN] (Dec. 15, 2020).

II. COPYCAT CULTURE: THE COPYING OF BIPOC CREATIONS AND FASHION LAW

The second Panel—“Copycat Culture: The Copying of BIPOC⁴⁶ Creations and Fashion Law Panel”—was moderated by Susan Scafidi,⁴⁷ Founder & Director of the Fashion Law Institute at Fordham University School of Law. This Panel focused on global policies, societal perceptions, and the fashion industry as they relate to cultural appropriation and copycat culture. The panelists included: Angela Byun, CEO of AB World, and Professor at Fordham University School of Law;⁴⁸ Marcela Bolland González, Partner at Uthhoff, Gómez, Vega & Uthhoff, S.C. in Mexico City, Mexico;⁴⁹ and Kenya Wiley, Policy Counsel in Washington D.C., and Professor at Georgetown University Law Center and Fordham University School of Law.⁵⁰

Professor Susan Scafidi prefaced the panel with a brief discussion regarding cultural appropriation. She defined cultural appropriation as “taking intellectual property, traditional knowledge, cultural expressions, or artifacts from another’s culture without permission.”⁵¹ Scafidi added that the term “cultural appropriation” comes from postcolonial studies and functions as a critique and descriptor.⁵² Today, cultural appropriation is seen as universally negative.

Scafidi then shifted to a discussion about how to draw a line between appropriate and inappropriate actions in relation to cultural appropriation. She shared what she called “the 3 S’s,” a rule to help

⁴⁶ BIPOC refers to Black, Indigenous, and People of Color. See BIPOC PROJECT, <https://www.thebipocproject.org> [<https://perma.cc/L5FR-A7QQ>].

⁴⁷ Susan Scafidi, FORDHAM UNIV. SCH. OF L., https://www.fordham.edu/info/23380/susan_scafidi [<https://perma.cc/V8F5-SNGL>].

⁴⁸ Angela Byun, FORDHAM UNIV. SCH. OF L., https://www.fordham.edu/info/23642/a_-_b/7801/angela_byun [<https://perma.cc/JM7M-7LJK>].

⁴⁹ Marcela Bolland González, UTHOFF, <https://en.uthoff.com.mx/experts/marcela-bolland-gonzalez/> [<https://perma.cc/N7UP-2T98>].

⁵⁰ Kenya Wiley, KENYA WILEY, <https://kenyawiley.com> [<https://perma.cc/6RXZ-P2WN>].

⁵¹ See *Symposium Video*, *supra* note 20; see also *Cultural Appropriation Was Always Inexcusable*, FORDHAM L. NEWS (July 16, 2020), <https://news.law.fordham.edu/blog/2020/07/16/cultural-appropriation-was-always-inexcusable/> [<https://perma.cc/3D89-AE65>].

⁵² See Kathleen Ashley & Véronique Plesch, *The Cultural Processes of “Appropriation,”* 32 J. MEDIEVAL & EARLY MOD. STUD. 1, 4–9 (2002).

make such determinations. The first “S” stands for source; ask who is the source of the borrowed cultural product. If the source is a community that has been historically disadvantaged or harmed in significant ways, then proceed with caution when borrowing cultural products. The second “S” stands for significance; ask what the significance of the cultural product is, as it could be sacred. The more significant the cultural product, the more dangerous it is to borrow. The final “S” stands for similarity; ask yourself how similar your creations are to the cultural product in question. The more similar your creation is to the original cultural product, the more problems can arise.

As it relates to problems of similarity, U.S. law is only so helpful. The only culture that receives legal protections around appropriation in the United States is Native American⁵³ culture through the Indian Arts and Crafts Act of 1990.⁵⁴ Trademark law may also apply but is limited by the First Amendment right to free speech.⁵⁵ In contrast, other countries, such as Mexico, Canada, Australia, and New Zealand, far surpass the United States in terms of offering protections.⁵⁶

⁵³ “In the United States, Native American has been widely used by is falling out of favor with some groups, and the terms American Indian or Indigenous American are preferred by many Native people. Native peoples often have individual preferences on how they would like to be addressed.” *Teaching & Learning About Native Americans*, NAT’L MUSEUM OF AM. INDIAN, <https://americanindian.si.edu/nk360/faq/did-you-know> [https://perma.cc/D36P-2AK4].

⁵⁴ Indian Arts and Crafts Act of 1990, Pub. L. No. 101-644, 104 Stat. 4662 (codified as amended at 25 U.S.C. §§ 305–310).

⁵⁵ See U.S. CONST. amend. I.

⁵⁶ See, e.g., Laura Collada, *Cultural Misappropriation; Where Mexico Stands*, EXPERT GUIDES (Aug. 20, 2019), <https://www.expertguides.com/articles/cultural-misappropriation-where-mexico-stands/ARHSXYKK> [https://perma.cc/79CG-XZU3] (describing where Mexico stands in terms of cultural appropriation laws); *Cultural Appropriation of Indigenous Peoples in Canada*, CANADIAN ENCYC., <https://www.thecanadianencyclopedia.ca/en/article/cultural-appropriation-of-indigenous-peoples-in-canada> [https://perma.cc/75P9-AZT6] (July 20, 2020) (describing the history and current state of Canadian cultural appropriation laws); *Indigenous Cultural and Intellectual Property (ICIP)*, ARTS L., <https://www.artslaw.com.au/information-sheet/indigenous-cultural-and-intellectual-property-icip-aitb/> [https://perma.cc/B826-EDHX] (providing information about Australia’s cultural appropriation laws); AJ Park, *It’s Not Trendy if It’s Appropriating*, LEXOLOGY (Sept. 16, 2020), <https://www.lexology.com/library/detail.aspx?g=1c137b6c-1c84-4999-9c66-c0e4da7acc68> [https://perma.cc/L5AU-VEHF] (discussing New Zealand’s cultural appropriation laws).

Before presenting recent examples of global fashion and luxury companies that have appropriated cultures in both appropriate and inappropriate ways, Angela Byun presented an alternative definition for “cultural appropriation”: “the adoption, usually without acknowledgment, of cultural identity markers from subcultures or minority communities into mainstream culture by people with a relatively privileged status.”⁵⁷ Byun emphasized the word “acknowledgment,” articulating that it is important for brands to acknowledge the source of their inspiration. This is especially true as public opinion becomes more impactful through social media and “call-out culture.”⁵⁸

Byun then introduced three recent cultural missteps by luxury companies. The first was Marc Jacobs in 2016, when the brand presented white models with dreadlocks.⁵⁹ In doing so, Marc Jacobs capitalized on the hairstyle, while Black employees and students have been suspended from their workplaces and schools because of this hairstyle.⁶⁰ The second misstep was by Dior in 2019, when the brand launched a video campaign for *Sauvage*, a men’s fragrance.⁶¹ Translating to “wild” or “savage,” the *Sauvage* the video campaign was deemed culturally insensitive because it included Native

⁵⁷ *Cultural Appropriation*, DICTIONARY.COM, <https://www.dictionary.com/browse/cultural-appropriation> [https://perma.cc/77SN-QDM8].

⁵⁸ “Call-out culture” refers to “a way of behaving in a society or group in which people are often criticized in public, for example on social media, for their words or actions, or asked to explain them.” *Call-Out Culture*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/call-out-culture> [https://perma.cc/JXQ2-7M3S].

⁵⁹ Mackenzie Wagoner, *The Dreadlock Debate: How Hair Is Sparking the Conversation of the Moment*, VOGUE (Sept. 21, 2016), <https://www.vogue.com/article/dreadlocks-hair-debate-moment> [https://perma.cc/QN45-28C9].

⁶⁰ See D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair in EEOC v. Catastrophe Management Solutions*, 71 U. MIA. L. REV. 987, 990–91 (2017); see also Yamiche Alcindor, *How Hair Discrimination Impacts Black Americans in Their Personal Lives and the Workplace*, PBS (Apr. 2, 2021, 6:40 PM), <https://www.pbs.org/newshour/show/how-hair-discrimination-impacts-black-americans-in-their-personal-lives-and-the-workplace> [https://perma.cc/CKV9-Q8EM] (“In 2018, a referee in New Jersey forced Andrew Johnson, a Black high school student, to cut off his locs before competing in a wrestling match.”).

⁶¹ J. Janewa Osei-Tutu, *Protecting Culturally Identifiable Fashion: What Role for GIs?*, 14 FIU L. REV. 571, 582 (2021).

American dancers performing in the background.⁶² The third misstep also occurred in 2019 when celebrity Kim Kardashian initially named her intimates and shapewear clothing line, *Kimono*.⁶³ A kimono is a traditional form of dress that Japanese people have worn for hundreds of years; as such, many Japanese and Asian American people found the name choice offensive.⁶⁴ Byun briefly highlighted additional missteps by luxury brands, including: Gucci's 2019 runway show in which white models wore don turbans that subsequently sold for \$790;⁶⁵ Dolce & Gabbana's 2019 design of culturally insensitive shirts for the Chinese New Year, depicting a pig holding money;⁶⁶ and Balenciaga's 2021 sale of \$1,000 sweatpants with a built-in fake underwear band—mimicking the look of saggy pants—ripping off Black youth culture.⁶⁷

Byun shifted to highlight instances in which luxury brands did a better job concerning Asian representation. Brands like BVLGARI, Louis Vuitton, Chanel, Givenchy, Dior, Fendi, Gucci, and Tiffany & Co. have integrated their marketing campaigns with more Asian faces, including K-pop and J-pop celebrities.⁶⁸ Byun believes that though cultural appropriation still occurs, brands are becoming more thoughtful and culturally sensitive to what is happening globally—particularly with the dawn of social media and real-time reactions. She also believes that fashion media brands are becoming mindful

⁶² *Id.*

⁶³ Joyce Boland-DeVito, *Fashion(ing) a Political Statement: A Review of the Legal & Social Issues that Arise from Banned Political Clothing and Other Controversial Fashion Items in Light of the U.S. Supreme Court's Decision in Minnesota Voters Alliance v. Mansky*, 30 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 493, 518–19 (2020).

⁶⁴ *See id.*

⁶⁵ Harmeet Kaur, *Here's Why Sikhs Were Offended by this \$790 Gucci Turban*, CNN (May 18, 2019), <https://www.cnn.com/style/article/gucci-turban-sikh-trnd/index.html> [<https://perma.cc/W946-ZLSJ>].

⁶⁶ Ambrose Leung, *Dolce & Gabbana Catches Flack for CNY T-Shirts*, HYPEBEAST (Feb. 13, 2019), <https://hypebeast.com/2019/2/dolce-gabbana-chinese-new-year-t-shirt-upset-consumers> [<https://perma.cc/6GSF-FRZW>].

⁶⁷ Fernando Alfonso III, *Fashion Designer Called Out for Cultural Appropriation Over Its \$1,190 Pants*, CNN (Sept. 12, 2021), <https://www.cnn.com/style/article/balenciaga-boxer-sweatpants-racism-tiktok-cultural-appropriation/index.html> [<https://perma.cc/4E5P-5Q6G>].

⁶⁸ *See, e.g.,* Janelle Okwodu, *BTS and Louis Vuitton's New Fashion Film Is a Game Changer*, VOGUE (July 7, 2021), <https://www.vogue.com/article/bts-louis-vuitton-fall-winter-2021-film> [<https://perma.cc/W37D-2RNE>].

of the diversity and inclusivity of their employees, focusing on creating diversity committees with more Black, Asian, and Brown creators in the room to provide feedback on content.⁶⁹

Next, Marcela Bolland González introduced herself and shared recent policy changes implemented by the Mexican government concerning cultural appropriation. She expressed that at the beginning of the 2020 political administration in Mexico, the government prioritized pursuing cases of misappropriation of Mexican culture.⁷⁰ Mexico did so through their Ministry of Culture, which began sending cease-and-desist letters to brands in the fashion industry that were misappropriating Mexican cultural heritage.⁷¹ However, González stated that the cease-and-desist letters were unimpactful because Mexican federal copyright law allowed anyone to use art and handicraft works for free, so long as the place of origin was clearly stated.⁷²

González noted that in 2021, policies began shifting and a new amendment to Mexico's copyright law was enacted.⁷³ The amendment made it such that in Mexico, to use a cultural expression or art from indigenous communities, one must obtain the corresponding authorization from the representative of that community.⁷⁴ González

⁶⁹ See Iman Stevenson, *Has the Fashion Industry Kept Its Diversity Promise?*, ELLE (Oct. 1, 2021), <https://www.elle.com/fashion/a37806455/fashion-industry-diversity-promise/> [<https://perma.cc/5VKX-VM5N>] (discussing various efforts recently taken by fashion companies to improve diversity within the industry); see also Barbara Santamaria, *BFC Creates Diversity and Inclusion Committee*, FASHION NETWORK (Sept. 17, 2020), <https://www.fashionnetwork.com/news/Bfc-creates-diversity-and-inclusion-committee,1244203.html> [<https://perma.cc/XRN7-7ES7>] (“The British Fashion Council is stepping up its efforts to fight prejudice and discrimination.”).

⁷⁰ See Victoria Sofia Martín Santos, *Mexico to Pass Law Against Cultural Appropriation*, ESQUIVEL & MARTIN SANTOS (May 7, 2021), <https://www.emps.es/post/mexico-legislates-cultural-appropriation> [<https://perma.cc/7WH3-FU7W>].

⁷¹ Megan C. Hills, *Mexico Accuses Zara, Anthropologie and Patowl of ‘Cultural Appropriation,’* CNN (May 31, 2021), <https://www.cnn.com/style/article/mexico-zara-anthropologie-cultural-appropriation/index.html> [<https://perma.cc/2XBT-DKVM>].

⁷² Ley Federal del Derechos de Autor [LFDA], art. 159, Diario Oficial de la Federación [DOF], 24-12-1996, últimas reformas DOF 24-01-2020 (Mex.); see Collada, *supra* note 56.

⁷³ See Santos, *supra* note 70.

⁷⁴ Luis C. Schmidt, *New General Law for the Protection of Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities in Mexico*, NAT'L L. REV. (July 27, 2021), <https://www.natlawreview.com/article/new-general-law-protection-cultural->

explained that implementation of the law is ongoing given the various representatives within different communities. However, in González's opinion, the amendment is a start, providing legal backing to the cease-and-desist letters sent by the Mexican Ministry of Culture. González also stated that under Mexican copyright law, misappropriation claims may be brought to the Mexican Institute of Industrial Property—an entity that can impose fines and award damages.⁷⁵ The Institute also works with local communities to provide information about legal protections like trademarks.⁷⁶

González then discussed new legislative approaches to mitigate cultural misappropriation in Mexico. The first approach is the Federal Law for the Protection of the Indigenous and Afro-Mexican Communities' Cultural Heritage.⁷⁷ At the time of this Panel, the bill was approved by Mexico's House and awaiting Senate review.⁷⁸ The proposed legislation mandates fair remuneration or profit-sharing schemes when indigenous cultural heritage is appropriated, essentially requiring fair compensation for indigenous communities for the use of their cultural heritage.⁷⁹ Misappropriators would also be vulnerable to imprisonment for two to ten years.⁸⁰

heritage-indigenous-and-afro-mexican-peoples-and/ [https://perma.cc/B8R3-AQ72]
("The cultural heritage of indigenous and Afro-Mexican peoples and communities will be understood as reserved by the corresponding people or community, and its use and exploitation will be prohibited unless they grant their free, prior, and informed consent . . .").

⁷⁵ See *id.* (The law "[e]stablishes the sanctions for the misappropriation and use, exploitation, commercialization, or reproduction, of the traditional knowledge and cultural expressions of indigenous peoples and communities . . .").

⁷⁶ See *id.*

⁷⁷ Ileana Ferrer Fonte, *Mexico Protects by Law Indigenous and Afro-Mexican Cultural Heritage*, PRENSA LATINA (Jan. 18, 2022, 11:41 AM), <https://www.plenglish.com/news/2022/01/18/mexico-protects-by-law-indigenous-and-afro-mexican-cultural-heritage/> [https://perma.cc/Y6T6-CEDM].

⁷⁸ The Mexican Senate approved this federal law in late November to early December 2021. *Mexico Protects Indigenous & Afro-Descendant People's Heritage*, TELESUR (Dec. 5, 2021), <https://www.telesurenglish.net/news/Mexico-Protects-Indigenous-Afro-descendant-Peoples-Heritage-20211205-0002.html> [https://perma.cc/2B55-DQMM].

⁷⁹ See Tamara Nava, *New Law of Intellectual Property Protection for Indigenous Communities*, CLARKEMODET (Jan. 28, 2022), <https://www.clarkemodet.com/en/news-posts/new-law-of-intellectual-property-protection-for-indigenous-communities/> [https://perma.cc/B5NA-49LC].

⁸⁰ See *id.*

Kenya Wiley began her presentation by explaining that fashion is connected to culture, community, content, and technology in unique ways. Today, with big tech and fashion intertwined, social media users can call-out cultural missteps and appropriation on Facebook, Instagram, and Twitter.⁸¹ Wiley then transitioned to a discussion about fashion designing, specifically as it relates to hip-hop and streetwear. She addressed how the hip-hop and streetwear culture in the fashion industry has historically misappropriated Black communities.⁸² To exemplify, she noted Urban Outfitters' misappropriation of door-knocker earrings—a chunky style of earrings popular in Black and hip-hop culture.⁸³

Wiley also pointed out how Balenciaga's \$1,000 sweatpants ripped off Black youth culture by featuring a fake underwear band to mimic the look of saggy pants.⁸⁴ She also mentioned that saggy pants relate to prison culture (where Black males are overly-represented in the United States), in that prisoners are prohibited from accessing belts, sometimes causing their pants to sag.⁸⁵ Despite the fashion industry's appropriative look, a number of southern U.S. cities—including Louisiana, Mississippi, and Georgia—have laws banning saggy pants, markedly disfavoring Black culture.⁸⁶

Next, Wiley discussed concerns from source communities, articulating the importance of consulting and including the source community in discussions as brands develop products. She believes that for brands to avoid cultural missteps, brands must have

⁸¹ See *Call-Out Culture*, *supra* note 58.

⁸² See Jonquil Lawrence, *A Brief History of Trends that Originated from Black Communities*, BRICKS MAG. (June 29, 2020), <https://bricksmagazine.co.uk/2020/06/29/black-culture-in-fashion-a-brief-history-of-trends-that-originated-from-black-communities/> [https://perma.cc/M9JL-CQ43].

⁸³ See Erica Euse, *Who Owns Hoop Earrings?*, VICE: I-D (Mar. 15, 2017, 9:30 AM), https://i-d.vice.com/en_uk/article/j5mqyy/who-owns-hoop-earrings [https://perma.cc/J6W9-N7FU].

⁸⁴ Alfonso III, *supra* note 67.

⁸⁵ William C. Vandivort, *I See London, I See France: The Constitutional Challenge to "Saggy" Pants Laws*, 75 BROOK. L. REV. 667, 669 (2009).

⁸⁶ See Katie Schwartzmann, *Shreveport Repeals Its Discriminatory "Saggy Pants" Ban*, ACLU LA. (June 17, 2019, 9:30 AM), <https://www.aaclu.org/en/news/shreveport-repeals-its-discriminatory-saggy-pants-ban> [https://perma.cc/4JTW-ATMR] (“According to Mother Jones, municipalities in Georgia, Mississippi, New Jersey, South Carolina, and other parts of Louisiana still have anti-sagging ordinances on the books.”).

representation from diverse backgrounds and ensure diverse voices are amplified and incorporated throughout all stages of the organizational operations. Additionally, brands must credit source communities by recognizing them upfront. Wiley believes it is critical for companies to compensate source communities, especially those historically violated or disrespected.

Lastly, Wiley commented that despite the vast diversity within the United States, it lacks both a centralized department of culture and a secretary of culture, unlike Mexico and other nations.⁸⁷ She concluded her thoughts by asserting that, accordingly, the United States should strive to ensure inclusivity for the country's immensely diverse population.

Following the panelists' initial commentary, they revisited the topic of Balenciaga's appropriative sweatpants⁸⁸ during the Q&A portion. Wiley expressed her opinion that Balenciaga should have stopped selling the sweatpants, especially given the design's connection to the criminal justice system.⁸⁹ However, Scafidi pointed out that even within individual communities, there are generational differences between perspectives about what is socially acceptable. Agreeing with Scafidi, Wiley again emphasized the need for diverse voices in the rooms where decisions are made.

Next, González was asked to clarify the process for identifying legitimate community representatives when seeking permission to use a component of a particular community's culture.⁹⁰ González responded that, while there is currently no clear path for this process, to be successful there will need be a registry for different communities identifying the legitimate representative(s).

Scafidi asked the Panel a final question, inspired by a *New York Times* article on essentialism by David Brooks:⁹¹ how should we respond to those who believe it is positive to be inspired by other cultures—that it shows appreciation and not appropriation? González

⁸⁷ See *supra* note 56 and accompanying text.

⁸⁸ Alfonso III, *supra* note 67.

⁸⁹ See discussion accompanying *supra* notes 84–86.

⁹⁰ See Schmidt, *supra* note 74.

⁹¹ David Brooks, *Here's the Mind-Set That's Tearing Us Apart*, N.Y. TIMES (Oct. 7, 2021), <https://www.nytimes.com/2021/10/07/opinion/essentialism-stereotypes-bias.html> [<https://perma.cc/VBG5-QPAS>].

responded by emphasizing a point Scafidi made earlier in the conversation; it is important to consider the significance of the expression to the source community and remain cognizant of the appropriated parties' feelings. Byun stated that it comes down to respect for the source community. Wiley agreed with Byun's point and added that respect can be achieved by including diverse voices in conversations.

III. KEYNOTE SPEECH: INTELLECTUAL PROPERTY AND DIVERSITY, EQUITY, AND INCLUSION

The keynote address was given by Theresa Conduah, Partner at Haynes & Boone.⁹² In her address, Conduah discussed the intersection of intellectual property ("IP") and diversity, equity, and inclusion. She began with a reference to *Coded Bias*, a documentary detailing the story of an MTI researcher who discovered that facial recognition technology inaccurately identifies the faces of women and those with darker skin.⁹³ This documentary inspired Conduah to consider how this problem could be resolved through IP.

She first emphasized the need for greater diversity in the legal field generally, and especially in IP practices. The lack of diversity is apparent in both scientific IP practices, such as patents, but even more apparently so in artistic IP practices, like copyright and trademark. Representation is overwhelmingly white and male in the IP fields,⁹⁴ with an even starker contrast between men and women of color.⁹⁵ However, there is limited intersectional data evaluating the

⁹² Theresa Conduah, HAYNES & BOONE, LLP, <https://www.haynesboone.com/people/conduah-theresa> [<https://perma.cc/3SMT-6FXX>].

⁹³ Ethan Shanfeld & Meredith Woerner, *How Netflix's 'Coded Bias' Breaks Down the Frightening Race and Gender Biased Algorithms That Run the World*, VARIETY, <https://variety.com/video/coded-bias-shalini-kantayya-documentary/> [<https://perma.cc/7LNY-ZXBF>].

⁹⁴ J. Shontavia Johnson et al., *Diversifying Intellectual Property Law: Why Women of Color Remain "Invisible" and How to Provide More Seats at the Table*, AM. BAR ASS'N (Mar./Apr. 2018), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2017-18/march-april/diversifying-intellectual-property-law/ (last visited Feb. 13, 2022, 1:04 PM) (citing AM. INTELL. PROP. L. ASS'N, 2017 REPORT OF THE ECONOMIC SURVEY, at F-11 (2017)).

⁹⁵ *Id.* Approximately "1.8 percent of IP attorneys are African American" and males make up "70 percent of IP attorneys in law firms." *Id.*

relationship between race and gender in the IP industries. Conduah highlighted the importance of collecting and publicizing this data.

Conduah outlined various tactics for improving diversity in IP. She stated that because of patent law's strict bar requirements,⁹⁶ improving the science, technology, engineering, and mathematics ("STEM") pipeline is crucial. Legislation like the 2019 Building Blocks of STEM Act is already helping to provide grant funding for STEM programs.⁹⁷ Conduah asserted that proposed legislation like the Inventor Diversity for Economic Advancement Act, which would require the United States Patent and Trademark Office to collect and disclose inventor data,⁹⁸ would encourage transparency in the racial and gender breakdown of applicants.

In corporate settlements, companies should commit to pipeline initiatives. For example, Microsoft has launched the Microsoft IP Law Institute, which offers an immersion program for law students of color.⁹⁹ The U.S. Intellectual Property Alliance and University of California, Berkeley also joined forces in the University of California, Berkeley Diversity Pledge.¹⁰⁰ Such programs aim to offer key mentorship opportunities for BIPOC students who might not

⁹⁶ Muireann Bolger, 'Extend Patent Bar to Design Practitioners,' *Say Academics*, WORLD INTELL. PROP. REV. (Feb. 16, 2021), <https://www.worldipreview.com/news/extend-patent-bar-to-design-practitioners-say-academics-21046> [<https://perma.cc/354R-R3Z9>].

⁹⁷ Building Blocks of STEM Act, Pub. L. No. 116-102, §§ 2(1), 4(3), 133 Stat. 3263, 3263-64 (2019); see Nicole Williamson, *Federal Dollars for All Humankind: Using Procurement Law to Increase Diversity in the Space Industry*, 85 J. AIR L. & COM. 421, 470-71 (2020).

⁹⁸ S. 632, 117th Cong. (2021); see Tillis Introduces Bipartisan, Bicameral Bill to Close the Patent Gap Faced by Women, THOM TILLIS (Mar. 9, 2021), <https://www.tillis.senate.gov/2021/3/tillis-introduces-bipartisan-bicameral-bill-to-close-the-patent-gap-faced-by-women> [<https://perma.cc/HR9M-XKYH>].

⁹⁹ *Beyond Microsoft: Addressing the Pipeline*, MICROSOFT, <https://www.microsoft.com/en-us/legal/diversity/addressing-the-pipeline> [<https://perma.cc/YVA9-ALX8>].

¹⁰⁰ *Industry and Academia Join Forces to Increase Diversity in Innovation*, FUNG INST. FOR ENG'G & LEADERSHIP (Aug. 3, 2021), <https://funginstitute.berkeley.edu/news/industry-and-academia-join-forces-to-increase-diversity-in-innovation/> [<https://perma.cc/MG9V-MCCR>]. The Berkeley Diversity Pledge was created as a collaboration with the top filers of U.S. patents. *Id.* It is an initiative where these companies "commit to implementing best practices to increase inventor diversity and share relevant data." *Id.*

otherwise have exposure to IP law.¹⁰¹ Conduah also spoke about the importance of promotion and retention of BIPOC employees. Employers must ensure that diverse attorneys are not just paraded for clients but are actually assigned substantive work. For instance, HP's general counsel informed law firms that it may withhold ten percent of invoice costs from law firms that fail to meet diversity standards as part of a diversity holdback mandate.¹⁰²

Individuals can also take substantive steps to help improve diversity. First, IP attorneys can make introductions for BIPOC law students and young associates. Second, IP attorneys should strive to be a voice for change by engaging in conversations about race and discrimination, even when it is uncomfortable. Conduah concluded on an optimistic note, celebrating that in her work with technology companies, she has seen promising efforts to reduce racial bias in their systems.

IV. COLOR OF MUSIC: A DISCUSSION ON RACE, MUSIC, AND INTELLECTUAL PROPERTY RIGHTS

Aditi Bagchi,¹⁰³ moderated the final Panel of the day—"Color of Music: A Discussion on Race, Music, and Intellectual Property Rights." This Panel addressed music and IP rights as they relate to diverse communities. The panelists included Danielle Price, Senior Vice President of Business & Legal Affairs at 10K Projects;¹⁰⁴ Kevin J. Greene, John J. Schumacher Chair and Professor of Law at Southwestern Law School;¹⁰⁵ Trevor Reed, Associate Professor of Law at Sandra Day O'Connor College of Law, Arizona State

¹⁰¹ *Id.*

¹⁰² Debra Cassens Weiss, *HP General Counsel Tells Law Firms to Meet Diversity Mandate or Forfeit Up to 10 Percent of Fees*, AM. BAR ASS'N (May 25, 2017), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2017/spring2017-0517-hp-general-counsel-diversity-mandate/> (last visited Feb. 13, 2022, 1:15 PM).

¹⁰³ *Aditi Bagchi*, FORDHAM UNIV. SCH. OF L., https://www.fordham.edu/info/23117/aditi_bagchi [<https://perma.cc/J8EB-3V5T>].

¹⁰⁴ *10K Projects Names Danielle Price Senior VP of Business and Legal Affairs*, VARIETY (Mar. 4, 2020, 5:55 AM), <https://variety.com/2020/biz/news/10k-projects-elliott-grainge-danielle-price-1203523042/> [<https://perma.cc/MSM5-XJ3B>].

¹⁰⁵ *Kevin J. Greene*, SOUTHWESTERN L. SCH., <https://www.swlaw.edu/faculty/full-time/kevin-j-greene> [<https://perma.cc/5WKA-XPPN>].

University;¹⁰⁶ and Marjorie Garcia, Partner at King, Holmes, Paterno & Soriano, LLP.¹⁰⁷

Danielle Price began her segment by discussing how Black and minority artists are disadvantaged from the inception of their careers. She primarily focused on the inherent issues that come with being a creator of color, emphasizing three points in particular: the lack of options for legal representation, disparities in deal-making, and inequities in the revenue stream.

First, Price discussed why minority artists have fewer options for representation. Racial bias in the legal community inherently limits the options available to artists of color seeking representation; there remains a problematic segment of the legal community dissuaded from representing racial minorities.¹⁰⁸ Price argued that, because people are more inclined to work with professionals with whom they identify—in looks, language, lived experiences, and otherwise¹⁰⁹—minority artists begin their careers already at a disadvantage relative to their white counterparts because there is an imbalanced pool of minority practitioners from which minority artists can choose.¹¹⁰ Accordingly, not only are minority artists foreclosed from representation by certain practitioners due to inherent bias,¹¹¹

¹⁰⁶ *Trevor Reed*, SANDRA DAY O'CONNOR COLLEGE OF L., <https://isearch.asu.edu/profile/3322065> [<https://perma.cc/5L65-CLLD>].

¹⁰⁷ *Marjorie Garcia*, KING, HOLMES, PATERNO & SORIANO, LLP, <https://www.khpslaw.com/attorney/marjorie-garcia/> [<https://perma.cc/N7YA-G3RN>].

¹⁰⁸ See generally Brian Libgober, *Getting a Lawyer While Black: A Field Experiment*, 24 LEWIS & CLARK L. REV. 53 (2020).

¹⁰⁹ *Id.*

¹¹⁰ See, e.g., Frances Howard et al., 'It's Turned Me from a Professional to a "Bedroom DJ" Once Again': COVID-19 and New Forms of Inequality for Young Music-Makers, 29 YOUNG 417, 429 (2021), <https://journals.sagepub.com/doi/pdf/10.1177/1103308821998542> [<https://perma.cc/FxW8-HVSV>] (stating "increasing income inequalities vary from musician to musician" and "young musicians are already tasked with forging their own career paths in a socio-economic landscape characterized by precarious lifestyles and the gig economy").

¹¹¹ See, e.g., Joshua Espinoza, *Kodak Black Settles Lawsuit Against Florida Record Label That Signed Him at 16*, COMPLEX (Mar. 27, 2017), <https://www.complex.com/music/2017/03/kodak-black-settles-deal-with-first-record-label-dollaz-dealz> [<https://perma.cc/KU5T-G2PC>]; see also Annia Mirza, *Kanye's Contracts Reveal Dark Truths About the Music Industry*, MEDIUM (Sep. 21, 2020), <https://medium.com/discourse/kanyes-contracts-reveal-dark-truths-about-the-music-industry-956418641df2>

but their options may also be limited in terms of their preferred practitioners.

Second, Price discussed the disparity in valued deal-making that minority and Black artists receive relative to the significant influence of their music on popular culture and the entertainment industry overall,¹¹² positing that Black music is the backbone of popular music today. In fact, Black music significantly fueled the resuscitation of the music industry in recent years.¹¹³ She stated that Black and minority artists' industry-wide impact should be reflected in deals, acknowledging the contribution that Black music brings. However, Price has yet to see this occur.

Finally, Price noted that the disparity is even more striking when considering additional streams of revenue, such as sponsorship and endorsement deals. She maintained that brands may avoid associating with Black artists to potentially curb any ill-consequences or negative public reception stemming from such affiliation.¹¹⁴ Thus, Black artists are deprived equal opportunity to benefit from additional revenue streams, perpetuating existing issues that creators of color face.¹¹⁵

[<https://perma.cc/X7NG-GHXU>] (mentioning rapper Tyga's lawyer also represented the record label to which Tyga was signing).

¹¹² See Drew Schwartz, *Black Artists Are Still Getting Ripped Off the Way Little Richard Was*, VICE (Oct. 21, 2020, 11:49 AM), <https://www.vice.com/en/article/z3vb5j/little-richard-made-millions-it-all-went-to-his-label> [<https://perma.cc/R8ME-MM5E>] (“All too often, major labels prey on young, poor Black artists, offering them lopsided record deals in which the company owns their music in perpetuity.”).

¹¹³ See, e.g., Sheldon Pearce, *The Whitewashing of Black Music on TikTok*, NEW YORKER (Sept. 9, 2020), <https://www.newyorker.com/culture/cultural-comment/the-whitewashing-of-black-music-on-tiktok> [<https://perma.cc/FA8A-BC97>] (discussing “Black club music being co-opted by white influencers in the name of clout” on TikTok).

¹¹⁴ Cf. *Rate Rap Low*, PEW RSCH. CTR. (Feb. 5, 2008), <https://www.pewresearch.org/fact-tank/2008/02/05/rate-rap-low/> [<https://perma.cc/3JFC-2V6A>] (“More than seven-in-ten among the U.S. public . . . offer a negative assessment of rap music, with 71% of [Black people] and 74% of [white people] agreeing that rap's societal impact is bad.”); Uzochi P. Nwoko, *A Flawed Perception of Hip-Hop*, HARV. CRIMSON (Apr. 4, 2018), <https://www.thecrimson.com/column/where-rap-meets-race/article/2018/4/4/whererapmeetsrace-installment4/> [<https://perma.cc/74JW-WQ3B>] (discussing how hip-hop artists—who are predominantly Black—frequently use their platform as a way to speak out about political or societal matters, stating that “[w]hen rappers do indeed resort to ‘being political,’ they often receive a flurry of backlash.”).

¹¹⁵ Cf. Noah Berlatsky, *Deep Asymmetries of Power: How the Recording Industry Spent Decades Denying Fair Payment to Black Artists*, RECORDING ACAD. GRAMMY AWARDS

Price mentioned that minority artists frequently sign away their IP rights to non-minority record labels.¹¹⁶ Black artists create these valuable artforms, yet the Black community is prevented from retaining ownership.¹¹⁷ To obtain the highest financial benefits, Black artists must often take their IP to non-Black industry representatives who regularly have deeper pockets.¹¹⁸

As one solution, Price urged increased representation of creators of color. People of color must staff the positions of power historically held by non-minorities for centuries.¹¹⁹ To effectuate change, minorities must have the opportunity to hold these positions, bringing their unique experiences and changing the system internally.

Professor Kevin J. Greene discussed how copyright law disadvantages Black creators. He opened with a rap:

When a judge named Duffy, who was up to no good,
 Started making trouble in rap's neighborhood.
 This took one little sample and Judge Duffy got mad.
 He said, "you rappers are all thieves and you belong
 in the slam!"
 Rappers whistle for justice, but when it came near,
 It was served by white judges hating rapping in their
 ears.
 If anything, rappers found their creations with snare
 And the indemnity provision left their bank accounts
 bear.¹²⁰

(Oct. 19, 2020, 6:26 PM), <https://www.grammy.com/grammys/news/deep-asymmetries-power-how-recording-industry-spent-decades-denying-fair-payment-black> [<https://perma.cc/65G2-Y5D6>] (addressing the historical, financial inequities faced by artists of color in the recording industry).

¹¹⁶ See Schwartz, *supra* note 112.

¹¹⁷ See *id.*

¹¹⁸ See *id.*; Nellie Gilles & Mycah Hazel, *Radio Diaries: Harry Pace and the Rise and Fall of Black Swan Records*, NPR, <https://www.npr.org/2021/06/30/1011901555/radio-diaries-harry-pace-and-the-rise-and-fall-of-black-swan-records> [<https://perma.cc/5E9J-BKC8>] (July 1, 2021, 6:09 PM).

¹¹⁹ See Taylor Mims, *New Annenberg Study Reveals 'Diversity Desert' for Music Industry Executive Roles*, BILLBOARD (June 15, 2021), <https://www.billboard.com/pro/annenberg-study-music-industry-executive-roles-diversity-desert/> [<https://perma.cc/HZ7T-S84L>].

¹²⁰ See *Symposium Video*, *supra* note 20.

Greene has helped artists like George Clinton¹²¹ and Sly Stone¹²² with their IP rights. Though the artists sold many records, copyright termination provisions deprived them of much financial return for ownership and catalog sales.¹²³ Greene specifically noted the sale of old-school hip-hop catalogs. For example, a toy company acquired the rights to the Death Row catalog, which was later sold in a multi-million-dollar transaction.¹²⁴ Greene argued that copyright law's treatment of these performers—alongside the fact that Black cultural productions are often performance-oriented—re-victimizes artists from the 1970s and 1980s, while Wall Street capitalizes on catalog sales worth millions of dollars.

Greene articulated a need for reform. He proposed leaning on the Copyright Office to send public service announcements (“PSAs”) to marginalized communities, informing creators of their right to copyright reversion thirty-five years after assigning their rights to labels.¹²⁵ He described a recent phone call with rappers who were coming upon the window for copyright termination. According to Greene, many of these artists were subject to terrible agreements that prevented adequate compensation over the years. Even further, unnecessarily complex termination provisions continue to frustrate this issue, leaving artists vulnerable to re-victimization again.¹²⁶

¹²¹ *Biography*, GEORGE CLINTON, <https://georgeclinton.com/bio/> [<https://perma.cc/GAT3-GZ53>].

¹²² *Biography*, SLY STONE MUSIC, <https://slystonemusic.com/biography/> [<https://perma.cc/PXR8-9HAN>].

¹²³ See Randall Roberts, *Why Sly Stone Still Can't Collect Royalties From His Classic Songs*, L.A. TIMES (Dec. 12, 2015, 6:05 AM), <https://www.latimes.com/entertainment/music/posts/la-et-ms-sly-stone-royalties-20151211-story.html> [<https://perma.cc/26BF-A3G8>] (stating that Sly Stone cannot collect \$5 million in royalties because he signed those rights to a production company); see also Allison Keyes, *George Clinton Fights for His Right to Funk*, NPR (June 6, 2012, 4:00 PM), <https://www.npr.org/sections/therecord/2012/06/06/154451399/george-clinton-fights-for-his-right-to-funk> [<https://perma.cc/9A4S-DR5A>].

¹²⁴ Elias Leight, *A Toy Company Now Owns Death Row Records*, ROLLING STONE (Aug. 23, 2019, 2:58 PM), <https://www.rollingstone.com/music/music-news/hasbro-death-row-records-entertainment-one-875805/> [<https://perma.cc/6CSR-35V3>].

¹²⁵ 17 U.S.C. § 203(a)(3).

¹²⁶ K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U. J. GENDER SOC. POL'Y & L. 365, 373–74 (2008).

Greene then explained the “seven deadly sins of copyright law,” as follows: (1) fixation;¹²⁷ (2) minimal originality;¹²⁸ (3) idea/expression distinctions;¹²⁹ (4) unprotected performance;¹³⁰ (5) copyright formalities;¹³¹ (6) lacking moral rights protections; and (7) contract and copyright interface. Focusing on copyright formalities, he explained that artists must jump through excessive hoops to secure protection.¹³² However, he believes meaningful reform is possible. Specifically, Greene noted that it is warranted to reform the copyright termination provisions by leaning on the Copyright Office to send out the aforementioned PSAs. He also argued that the registration process should be reformed, pointing to the Supreme Court’s decision requiring mandatory registration,¹³³ which “put a knife in the heart” of Black artists.

Greene also discussed needed reform to the Copyright Office’s internal rules regarding choreography. Currently, social dance steps are not protected,¹³⁴ allowing massive corporations to use Black teenagers’ choreographic expressions without just compensation. Ballet is protected, but the Charleston or the newest TikTok dances are not.¹³⁵ Greene asked, “why is what Black folks do never protected by copyright law?” According to Greene, before any negotiation of dollars and cents can be had, a formal apology from the American music industry is warranted for the disparate treatment of Black artists.

Professor Trevor Reed discussed tribal appropriation, how tribes assert their rights, and why tribal IP laws are unenforced today. He explained that settler populations have taken everything imaginable

¹²⁷ 17 U.S.C. § 102(a).

¹²⁸ *See id.*

¹²⁹ 17 U.S.C. § 102(b).

¹³⁰ *See generally* 17 U.S.C. § 110.

¹³¹ *See, e.g.*, 17 U.S.C. §§ 201, 203–205 (addressing copyright ownership, termination of transfers and licenses, execution of ownership transfers, and recording requirements for transfers).

¹³² *See id.*

¹³³ *See generally* *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881 (2019).

¹³⁴ *Brantley v. Epic Games, Inc.*, 463 F. Supp. 3d 616, 622 (D. Md. 2020).

¹³⁵ *Id.* at 623 (stating that ballets, which “represent a related series of dance movements,” are copyrightable choreography, but social dances are “uncopyrightable movements”).

from Indigenous people for centuries—land and natural resources, bodies for scientific study, fashion, food, cultural symbols and tattoos, song and dance, and literature.¹³⁶ Reed stated that tribal lands are hotbeds for creativity. Despite tribes' independent IP systems, the question remains why their IP rights are not enforced in today's creative economy.

Reed recounted the story of Laura Boulton¹³⁷ to illustrate how Indigenous cultures have previously been taken. In 1940, Boulton traveled to the Hopi lands and recorded songs from the Hopi people's sacred rituals.¹³⁸ Without seeking permission from the Hopi community, Boulton entered into an agreement to produce an album of these recordings.¹³⁹ Boulton released the recordings, titled *Indian Music of the Southwest*, which included a sacred song protected under tribal IP laws from being circulated without proper authority.¹⁴⁰ She released it with Smithsonian Folkways and transferred the rights to Columbia University.¹⁴¹ According to Reed, what is particularly notable is that Boulton was meticulous about each agreement, yet never entered into an agreement with any of the Indigenous peoples, nor paid royalties to the performers.¹⁴² Under the common law of copyright and tribal law, the tribal performers are the exclusive rights holders of these recordings,¹⁴³ however, neither the tribe nor its members knew these materials were published.

Boulton is just one example. Reed argued that a significant number of cultural expressions fall under tribal IP laws and are likely

¹³⁶ See, e.g., Donald L. Fixico, *When Native Americans Were Slaughtered in the Name of 'Civilization,'* HISTORY, <https://www.history.com/news/native-americans-genocide-united-states> [<https://perma.cc/9L6G-S3VN>] (Oct. 25, 2021).

¹³⁷ See Damaris Colhoun, *The Socialite Who Stopped at Nothing to Hunt Down Ancient Music*, ATLAS OBSCURA (Sept. 2, 2015), <https://www.atlasobscura.com/articles/the-socialite-who-stopped-at-nothing-to-hunt-down-ancient-music> [<https://perma.cc/2HRJ-EKE4>].

¹³⁸ Trevor Reed, *Who Owns Our Ancestors' Voices? Tribal Claims to Pre-1972 Sound Recordings*, 40 COLUM. J.L. & ARTS 275, 288 (2016).

¹³⁹ *Id.* at 290.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 289.

¹⁴³ *Id.* at 290.

collected without authorization or in violation of tribal IP laws.¹⁴⁴ According to Reed, most institutions fail to abide by tribal IP laws due to judicial colonialism. Ideally, the United States should enforce tribal IP laws—tribes are separate sovereigns that predate the Constitution and, thus, are generally not subject to the Constitution's limits, including the First Amendment.¹⁴⁵ However, judicial colonialism dating back to *Johnson v. M'Intosh* makes Indigenous sovereignty over property inferior to settler sovereignty, at least on tribal lands.¹⁴⁶

Finally, Reed stated there are only four ways to enforce tribal IP laws over settler institutions. First, tribes can enforce IP rights when they are created by federal statute, like the Copyright Act.¹⁴⁷ Second, tribes can directly enforce tribal laws under a federal common law right of action to remedy misappropriation or conversion.¹⁴⁸ Third, tribes can enforce tribal IP rights when misappropriation occurs on tribal lands.¹⁴⁹ However, most appropriation does not occur in this way today, making it difficult for tribes to obtain jurisdiction over misappropriators.¹⁵⁰ Some organizations have started acting independently and adopting internal policies that recognize tribal IP

¹⁴⁴ See, e.g., Dalindybo Bafana Shabalala, *Intellectual Property, Traditional Knowledge, and Traditional Cultural Expressions in Native American Tribal Codes*, 51 AKRON L. REV. 1125, 1130, 1133–34 (2017).

¹⁴⁵ See *Talton v. Mayes*, 163 U.S. 376, 384 (1896).

¹⁴⁶ See *Johnson v. M'Intosh*, 21 U.S. 543, 562 (1823) (holding that Native Americans' title to their lands cannot be recognized by the United States).

¹⁴⁷ Trevor Reed, *Creative Sovereignities: Should Copyright Apply on Tribal Lands?*, 67 J. COPYRIGHT SOC'Y U.S.A. 401, 406 (2020) (discussing how most circuit courts presume that federal laws apply to tribal lands).

¹⁴⁸ See *County of Oneida, N.Y. v. Oneida Indian Nation of New York State*, 470 U.S. 226, 235 (1985) (“Numerous decisions of this Court prior to *Oneida I* recognized at least implicitly that Indians have a federal common-law right to sue to enforce their aboriginal land rights.”).

¹⁴⁹ Reed, *supra* note 147, at 480 (“[W]hen non-Tribal-members enter a reservation comprised of Tribal-member owned land or land held in trust for the Tribe by the federal government, Tribes may generally assert regulatory authority over those non-members.”).

¹⁵⁰ Richard A. Guest, *Intellectual Property Rights and Native American Tribes*, 20 AM. INDIAN L. REV. 111, 125 (1996) (discussing how non-Native Americans opened doll factories using Navajo workers to reproduce dolls based on Hopi designs).

laws.¹⁵¹ Although this represents some momentum, for Reed, there is much more work to do in the copyright space.

Marjorie Garcia began her commentary by explaining that the biggest threat in Latin music is the lack of representation of Latinx lawyers, managers, and more.¹⁵² She recalled that when she was sixteen years old, she was presented with her first record label agreement. Her manager approached her and her parents and gave them twenty-four hours to sign the agreement, or risk losing it entirely. Her parents, who had only elementary education in their home countries of Guatemala and Mexico, were left to sift through the dense contract with voluminous legal jargon. Since she did not have enough time to find a lawyer, but was excited to launch her career, her parents signed the agreement on her behalf.

This experience informed Garcia's decision to pivot from the artist side of the industry to the business side, where she could protect young people who looked like her from similar experiences. She believes the primary enemy for Latinx artists is the lack of representation in legal and managerial positions.¹⁵³ Latinx people comprise thirty-five percent of California's population, but only seven percent of California's active and licensed lawyers.¹⁵⁴ Even further, of the seven percent, many may not speak Spanish proficiently enough to adequately advise Spanish-speaking Latinx clients. Garcia noted that a sense of trust and comfort is facilitated when an attorney speaks the client's language; language barriers, on the other hand, can contribute to disconnect, distrust, and miscommunications.¹⁵⁵

¹⁵¹ See, e.g., Reed, *supra* note 147, at 463 (discussing “the World Intellectual Property Organization’s decision to expedite three international legal instruments for the protection of Indigenous peoples’ genetic resources, traditional knowledge and traditional cultural expressions.”).

¹⁵² See Mims, *supra* note 119.

¹⁵³ *Id.*

¹⁵⁴ STATE BAR OF CAL., REPORT CARD ON THE DIVERSITY OF CALIFORNIA’S LEGAL PROFESSION 4 (2019), <https://www.calbar.ca.gov/Portals/0/documents/reports/State-Bar-Annual-Diversity-Report.pdf> [<https://perma.cc/L8CX-3BG2>].

¹⁵⁵ See Joseph Fearon, *Reasonable Doubt: Language Barriers and the Legal System*, GA. STRAIGHT (June 28, 2013, 2:19 PM), <https://www.straight.com/news/396331/reasonable-doubt-language-barriers-and-legal-system> [<https://perma.cc/2F7L-SJPX>].

Garcia also asserted that the Spanish and Latin music markets have grown exponentially since 2017.¹⁵⁶ For example, in 2017, “Despacito” was the most watched video on YouTube¹⁵⁷ and “Mi Gente” was the most streamed song,¹⁵⁸ placing two Latin songs in Billboard’s top ten.¹⁵⁹ Garcia recognized that though Latin music revenues increase every year, outpacing country music, electronic digital music, and other genres,¹⁶⁰ Latinx artists still lack positional power and are disproportionately undercompensated.

During the Q&A portion, Garcia discussed how music industry representatives in positions of power need to communicate with people of color to identify the struggles different communities are facing. Further, that it behooves industry executives to proactively ensure equal opportunities for diverse artists, rather than placing the burden on creators to identify solutions.

Price similarly articulated a need for more diverse representation in positions of power. Though it is important to include minorities in conversation and brainstorming, this alone is insufficient; from a minority perspective, many of these conversations are inadequately tailored to consider the unique and nuanced experiences of minorities in this country. Minority voices must be more thoroughly integrated in positions where decisions are regularly being made.

Greene reinforced Garcia’s earlier remarks, noting the lack of attention to the specific problems faced by Latinx artists. Additionally, he hopes to see the American music industry take responsibility

¹⁵⁶ See *Latin Music Is the Fastest Growing in the World*, ROUTENOTE (Oct. 15, 2021), <https://routenote.com/blog/latin-music-fastest-growing-in-world/> [<https://perma.cc/94VM-STVE>].

¹⁵⁷ Raisa Bruner, *This Is the New Most-Watched YouTube Video of All Time*, TIME (Aug. 4, 2017, 3:26 PM), <https://time.com/4888128/youtube-most-viewed-video/> [<https://perma.cc/9C6R-U5Q8>].

¹⁵⁸ Marisa Arbona-Ruiz, *The ‘Despacito’ Effect: The Year Latino Music Broke the Charts*, NBC NEWS, <https://www.nbcnews.com/news/latino/despacito-effect-year-latino-music-broke-charts-n830131> [<https://perma.cc/7JEV-AFSB>] (Dec. 25, 2017, 2:04 PM).

¹⁵⁹ See Leila Cobo, *Latin Is the Third Largest Music Genre in the World, Plus More Key Facts*, BILLBOARD (Oct. 20, 2020), <https://www.billboard.com/music/latin/latin-third-largest-music-genre-facts-9468876/> [<https://perma.cc/G8WK-PLJJ>].

¹⁶⁰ Jeff Benjamin, *Latin Music Is Now More Popular Than Country & EDM in America*, FORBES (Jan. 4, 2019, 4:39 PM), <https://www.forbes.com/sites/jeffbenjamin/2019/01/04/latin-music-in-2018-album-song-sales-consumption-buzzangle-report/> [<https://perma.cc/Z2VR-ZBUD>].

for its actions and apologize to those artists it has long neglected. Reed remarked a similar desire for Native American Nations, noting that he hopes to see the United States enter treaties with these Nations. In the end, the IP system must be reformed to work for everybody.

Lastly, the Panelists were asked what role consumers have in effectuating change. Greene considered it somewhat unreasonable to put the burden on consumers to correct an industry fallacy. Alternatively, Price asserted that the music industry is a business of revenue; thus, consumers can influence private actors. However, those who work in the industry have a greater ability—and thus duty—to effect change.