

# Santa Clara University

## Hot Topics in Internet Law

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# On Today's Menu

- Perennials
- Quick Hits
- Intermediary deputization
- Consumer reviews
- Social media account disputes
- Copyright/trademark trolling
- gTLDs

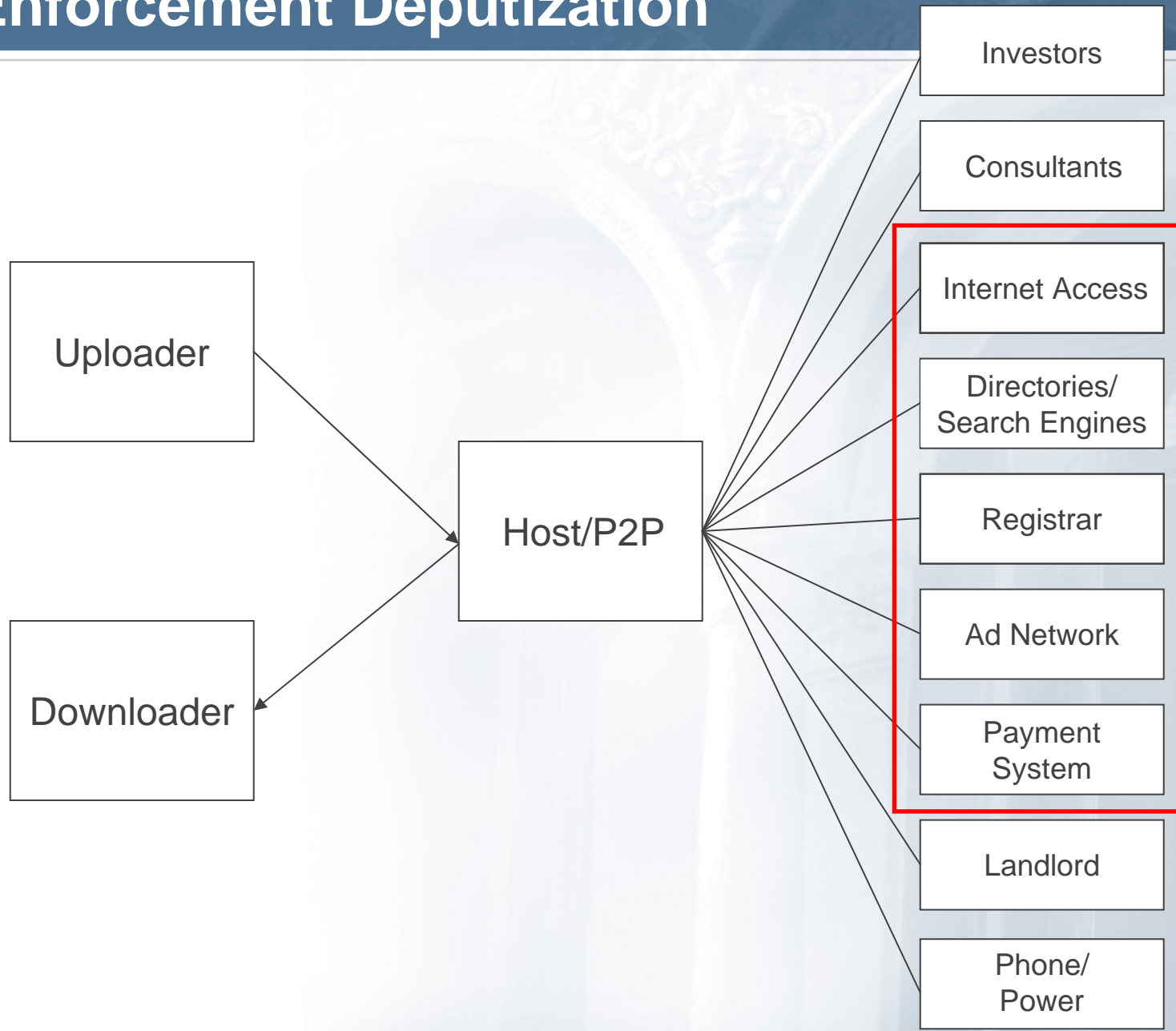
# Perennials

- **Keyword advertising**
  - Rosetta Stone pushed back legal certainty 5-10 years
  - Suing Google remains economically irrational
  - Suing competitors typically is economically irrational too
- **17 USC 512 litigation**
  - Notice-and-takedown remains robust
  - Litigation costs keep going up
  - 512(f) is a bust
- **Secondary trademark infringement**
  - De facto notice-and-takedown scheme

# Quick Hits

- Oracle v. Google: Java APIs aren't copyrightable
- Fraley v. Facebook: publicity rights claims support Article III jurisdiction
  - Reminder: CA publicity rights statute has mandatory fee-shifting clause
- Cambridge Univ. Press v. Becker: coursepacks containing full book chapters may qualify for fair use
  - Bonus: publishers don't keep good ownership records
- Author's Guild v. Google: class certified
- Kirtsaeng v. John Wiley & Sons: certiorari granted

# Enforcement Deputization



# Post-SOPA Battlegrounds

- DOJ criminal prosecution (ex: Megaupload)
- ICE domain name seizures (ex: Dajaz1)
- International trade agreements (ex: ACTA, TPP)
- Ex parte TROs purportedly binding non-litigants
- “Voluntary” initiatives. Examples:
  - “Graduated response”/Center for Copyright Information
  - ANA/4As + blacklist
  - Verisign’s proposed “anti-abuse” policy
- *SOPA WILL HAPPEN WITHOUT ANY LEGISLATION*

# Consumer Reviews

- **47 USC 230 = websites aren't liable for third party reviews**
  - Copyright bypass (Medical Justice; WorldStarHipHop)
  - Trademark bypass (Ascentive/Vo)
- **Non-disclosure clauses in vacation rental contracts**
  - Renter shall not “discuss or disclose the occupancy of the subject property with any entity not bound by the terms of this agreement without the expressed written authorization of the homeowner and the property agent representing the homeowner”
- **Remediating negative reviews**
  - Preempt them
  - Publicly admit any mistakes
  - Do nothing; consumers don't overweight individual negative reviews; and some negative reviews improve sales (cf. Fireworks v. Hosto)
  - Reach out to unhappy customer
  - If necessary, publicly rebut
  - If the review is provably fake, complain to review website
  - Lawsuit is last resort
    - Streisand Effect
    - Cost-benefit + anti-SLAPP laws
    - Counterclaims
    - Refer competitor gaming to FTC/state AGs

# Social Media Account Disputes

- **PhoneDog v. Kravitz**
  - Ex-contractor tweeting at “Phonedog\_Noah” changes account name to “NoahKravitz”
- **Christou v. Beatport**
  - Ex-employee logs into MySpace account to promote competitive service
- **Observations**
  - Overlap of IP, privacy, computer crimes
  - Document account expectations early!
  - Companies should control login credentials
  - Social media account lawsuits are economically irrational



# Copyright/Trademark Trolling

- **Lessons from the Righthaven debacle**
  - Judges hate no-notice lawsuits
  - Right to sue isn't assignable
  - Fair use can protect 100% republication
  - Suing mom-and-pop bloggers isn't scalable or lucrative
  - 505 fee shifts > Righthaven's revenues
- **Increased skepticism of mass defendant lawsuits**
- **TM trolling**
  - Premier Pool Management v. Lusk ("Premier Pools")
  - Groupon v. Groupon
  - Kinbook v. Microsoft ("Kinbox" v. "Kinect for the Xbox")
  - Fancaster v. Comcast ("Fancaster" v. "Fancast")

# gTLD Expansion

- **What we know:**
  - DNS is more complex
  - ICANN and some service providers will mint money
  - ICANN will act like an entrenched incumbent monopolist
  - Trademark owners will pay significant taxes for no extra value
- **What we don't know:**
  - Will consumers benefit?
  - Will new TLD registry operators benefit?
  - Will consumers change their online practices?
  - Will the new ADRs change the dynamic between registrants & TM owners?