

David A. Simon

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APPOINTMENTS	Northeastern University School of Law Associate Professor of Law ↗	2023 – present
	Harvard Law School Petrie-Flom Center for Health Law Policy, Biotechnology, & Bioethics Research Fellow & Lecturer on Law ↗	2021 – 2023
	George Washington University Law School Visiting Associate Professor & Frank H. Marks Intellectual Property Fellow ↗	2020 – 2021
	University of Kansas School of Law Visiting Assistant Professor ↗	2019 – 2020
	Hanken School of Economics Fellow	2019 – 2020
EDUCATION	University of Cambridge, Trinity College Ph.D., Law, Cambridge International Scholar (full merit scholarship & stipend)	2019
	Harvard Law School LL.M. ↗	2011
	Chicago-Kent College of Law J.D., Order of the Coif, High Honors (Top 5%), Dean's Scholarship	2008
	University of Michigan B.A., High Distinction, Political Science & Philosophy (minor)	2005
INTERESTS	Primary Interests Drug & Device Law, Health Law, Innovation, Intellectual Property, Torts Secondary Interests Administrative Law, Law & Philosophy, Legal Theory, Property	
LAW REVIEW PUBLICATIONS	1. <i>IP Pluralism's Puzzle</i> (with Patrick Goold) __ TEXAS LAW REVIEW __ (forthcoming 2025)	
	2. <i>Gatekeeping Drugs</i> __ ARIZONA STATE LAW JOURNAL __ (forthcoming 2025)	
	3. <i>Copyright's Missing Personality</i> __ HOUSTON LAW REVIEW __ (forthcoming 2025)	

4. [*Preempting Innovation or Innovating Preemption?*](#) (with I. Glenn Cohen & Carmel Shachar)
NORTHWESTERN LAW REVIEW ONLINE (2024)
5. [*Off-Label Preemption*](#)
2004 WISCONSIN LAW REVIEW 1079 (2024)
6. [*On Copyright Utilitarianism*](#) (with Patrick Goold)
99 INDIANA LAW JOURNAL 721 (2024)
7. [*Copyright, Moral Rights, and the Social Self*](#)
34 YALE JOURNAL OF LAW & THE HUMANITIES __ (forthcoming 2024)
8. [*Off-Label Speech*](#)
72 EMORY LAW JOURNAL 549 (2023)
9. [*Off-Label Innovation*](#)
56 GEORGIA LAW REVIEW 701 (2022)
10. [*Trademark Law & Consumer Safety*](#)
72 FLORIDA LAW REVIEW 673 (2020)
↳ covered by Camilla Hrdy, WRITTEN DESCRIPTION BLOG, July 30, 2020
11. [*Analogies in IP: Moral Rights*](#)
21 YALE JOURNAL OF LAW & TECHNOLOGY 337 (2019)
12. [*Taxing the Poor Through Real Estate Transfers*](#)
2020 ILLINOIS LAW REVIEW ONLINE 29 (2020)
13. [*A Legal Stimulus*](#)
NORTHWESTERN UNIVERSITY LAW REVIEW OF NOTE (2020)
14. [*Legal Realism Now?*](#)
107 KENTUCKY LAW JOURNAL ONLINE 1 (2019) (invited response)
15. [*The Confusion Trap: Rethinking Parody in Trademark Law*](#)
88 WASHINGTON LAW REVIEW 1021 (2013)
↳ cited in Appellant's Brief in VIP Products LLC, Plaintiff-counter-defendant - Appellant, v. Jack Daniel's Properties, Inc., 2018 WL 5907101 (9th Cir. 2018)
16. [*An Empirical Analysis of Fair Use Decisions Under the Uniform Domain-Name Dispute-Resolution Policy*](#)
53 BOSTON COLLEGE LAW REVIEW 65 (2012)
↳ cited in JAMES GRIMMELMANN, INTERNET LAW: CASES AND PROBLEMS (11th ed. 2021)

17. *Explaining the Supreme Court's Shrinking Docket* (with Ryan J. Owens)
53 WILLIAM & MARY LAW REVIEW 1219 (2012)
 18. *Culture, Creativity, & Copyright*
28 CARDOZO ARTS & ENTERTAINMENT LAW JOURNAL 279 (2011)
 19. *Reasonable Perception and Parody in Copyright Law*
2010 UTAH LAW REVIEW 779 (2010)
 - ↳ cited in AIPLA Amicus Curiae Brief in Supp. of Neither Party on Writ of Cert. to the U.S. Supreme Court, *Andy Warhol Found. for the Visual Arts, Inc., v. Goldsmith*, 2022 WL 2288959 (U.S.)
 20. *In Search of (Maintaining) the Truth: The Use of Copyright Law by Religious Organizations*
16 MICHIGAN TELECOMMUNICATIONS & TECHNOLOGY LAW REVIEW 355 (2010)
 21. *Teaching Without Infringement: A New Model for Educational Fair Use*
20 FORDHAM INTELLECTUAL PROPERTY, MEDIA & ENTERTAINMENT LAW JOURNAL 453 (2010)
 22. *Mo' Money, Mo' Problems: Should Appellate Courts Have Nonparty Jurisdiction Over Lawyers' Appeals From Nonmonetary Sanctions?*
78 UNIVERSITY OF CINCINNATI LAW REVIEW 183 (2009)
 23. *Register Trademarks and Keep the Faith: Trademarks, Religion, and Identity*
49 IDEA 233 (2009)
 - ↳ 1st Place, IDEA Student Writing Competition
 - ↳ cited in *Sovereign Military Hospitaller v. Florida Priory of Knights Hospitallers*, 816 F. Supp. 1290 (S.D. Fla. 2011)
 - ↳ cited in Brief in Support of Petition for Certiorari to the U.S. Supreme Court, *Universal Church, Inc. v. Toellner*, 2019 WL 1556321 (U.S.)
- PEER-REVIEWED PUBLICATIONS**
24. *The Effect of Loper Bright on FDA's Regulation of Lab-Developed-Tests* (with Michael Young)
JAMA (2024)
 25. *Developing Drugs for a Developing Climate* (with I. Glenn Cohen)
HEALTH AFFAIRS FOREFRONT (2024)
 26. *New Drug Development Paradigms? Opportunities and Uncertainties with New Government Drug Repurposing Programmes* (with Johnathan Liddicoat, Ashleigh Hamidzadeh, Kathy Liddell, Marco Schito, Mateo Aboy, & Timo Minssen)
753 SCIENCE TRANSLATIONAL MEDICINE eadl0998 (2024)
 27. *Doctors as Device Manufacturers? FDA Regulation of Clinician-Generated Innovation in the ICU* (with Michael Young)
___ CRITICAL CARE MEDICINE ___ (forthcoming 2024)

28. *Using Digital Technologies to Diagnose in the Home: Recommendations From a Delphi Panel* (with Sara Raza, Carmel Shachar, & I. Glenn Cohen)
18 NPJ DIGITAL MEDICINE 1 (2024)
 29. *Lucky IP* (with Patrick Goold)
42 OXFORD JOURNAL OF LEGAL STUDIES 843 (2022)
 30. *Skating the Line Between Wellness Products and Regulated Devices: Strategies and Implications* (with I. Glenn Cohen & Carmel Shachar)
9 JOURNAL OF LAW & BIOSCIENCES 1 (2022)
 - ↪ covered in MEDTECH INSIGHT, *JAMA: 'General Wellness' Apps Could Pose Patient Safety Quandary*
 31. *Should Alexa Diagnose Alzheimer's?: Legal and Ethical Issues With At-Home Consumer Devices* (with Barbara Evans, Carmel Shachar, and I. Glenn Cohen)
3 CELL REPORTS MEDICINE 1 (2022)
 - ↪ covered in INVERSE, *Alexa Could Diagnose Alzheimer's and Other Brain Conditions – Should It?*
 32. *Unsettled Liability Issues for "Pre-diagnostic" Wearables and Health-Related Products* (with I. Glenn Cohen & Carmel Shachar), JAMA (2022)
 33. *At-Home Diagnostics and the Device vs Wellness Line* (with I. Glenn Cohen & Carmel Shachar), 327 JAMA 523 (2022)
 34. *The Hospital-at-Home Presents Novel Liabilities for Physicians, Hospitals, Caregivers, and Patients* (with I. Glenn Cohen, Anaeze Offodile, & Celynne Balatbat)
NATURE MEDICINE (2022)
 35. *Patient Data Ownership: Who Owns Your Health?* (with Kathleen Liddell & Anneke Lucassen)
8 JOURNAL OF LAW & BIOSCIENCES 1 (2021)
 - ↪ received the Hanken Foundation (Stiftelsen Svenska handelshögskolan) Scholarly Award
 36. *Telehealth to Address Health Disparities: Potential, Pitfalls, and Paths Ahead* (with Carmel Shachar)
49 JOURNAL OF LAW, MEDICINE & ETHICS 415 (2021)
- BOOK CHAPTERS**
37. *Physician & Manufacturer Liability for Remote Patient Monitoring* (with Aaron S. Kesselheim) *in*
DIGITAL AT HOME DIAGNOSTICS: ETHICAL, LEGAL, AND REGULATORY ISSUES (I. Glenn Cohen, Daniel Kramer, Julia Adler-Milstein, and Carmel Shachar eds., 2024)

38. *Assessing Public and Private Rights of Action to Regulate Health Data*, (with I. Glenn Cohen & Carmel Shachar) in
DATA SHARING IN HEALTH SCIENCES AND LAW (Marcelo Companucci & Timo Missen, eds., Springer 2023)
39. *Information Capacity, Regulation, & Certification Marks in*
CAMBRIDGE HANDBOOK ON THE LAW & ECONOMICS OF TRADEMARKS (Glynn Lunney ed., 2023)

**OTHER
PUBLICATIONS**

40. *DIAGNOSING IN THE HOME: THE ETHICAL, LEGAL, AND REGULATORY CHALLENGES AND OPPORTUNITIES OF DIGITAL HOME HEALTH*
Petrie-Flom Center White Paper (2023)
41. *Regulatory Roadmap for Digital Diagnostics*, Petrie-Flom Center Policy Paper (2023)
42. *The Devil is in the Details with Biden's Free COVID Testing Plan*
BILL OF HEALTH, (Dec. 3, 2021)
43. *Pandemic Diagnostics: Present and Future Implications of Self-Testing Reimbursement*
BILL OF HEALTH, (July 14, 2021)
44. *Legal Scholarship Highlight: An Empirical Analysis of the Court's Shrinking Docket* (with Ryan Owens)
SCOTUSBLOG (June 20, 2012)
45. *Application of Deterrence Assessment Methodologies to Commercial Ferry Attack Scenario*
(contributor)
CENTER FOR ADVANCED DEFENSE STUDIES (2005)

BOOKS

46. *A PATIENT'S GUIDE TO THORACIC OUTLET SYNDROME* (2018)

**WORKS IN
PROGRESS**

Off-Label Inducement
Developing Drugs for a Developing Climate
Memoranda of Innovation
Prescribing Liability for Black Box AI (with Sara Gerke)
Liability for AI Medical-Transcription Software (with Sara Gerke)
Can Robots Have Law? (with Kevin Tobia)
Patenting Intended Use (with Michael Paasche-Orlow)
The Case of Snickerwood Soup (with Patrick Goold)

GRANTS AND FUNDING	<p>Horizon Europe (European Union) CLASSICA Project, University of Illinois Urbana-Champaign</p> <p>Gordon and Betty Moore Foundation Diagnosing in the Home, Harvard Law School</p>	<p>2024 – 2026</p> <p>2021 – 2024</p>
AWARDS	<p>Northeastern University School of Law Faculty Fellowship Award, Center for Health Policy & Law</p> <p>George Mason University Scalia Law School Edison Fellow</p> <p>Loyola University Chicago School of Law Wiet Life Sciences Law Scholar</p> <p>University of Cambridge Cambridge International Scholar</p> <p>Harvard Law School Summer Academic Fellow</p> <p>Harvard Journal of Law & Technology Member</p>	<p>2023 – 2024</p> <p>2023 – 2024</p> <p>2020</p> <p></p> <p>2011</p> <p>2010 – 2011</p>
COURSES TAUGHT	<p>Northeastern University School of Law Tort Law Drug and Device Innovation Administrative Law</p> <p>Harvard Law School Drug and Device Innovation</p> <p>George Washington University Law School Trademark Law</p> <p>University of Kansas School of Law Tort Law Patent Law Criminal Law</p>	
LEGAL EXPERIENCE	<p>Simon Law Group LLC Attorney and Managing Member</p> <p>Harvard Law School</p>	<p>2016 – present</p> <p>2012</p>

Visiting Researcher

University of Navarra Law School 2012
 Visiting Professor of Intellectual Property Law

Harvard College, Department of Government 2011 – 2012
 Teaching Fellow

Harvard Law School 2011
 Summer Academic Fellow

Hon. Martin Ashman, U.S. District Court, Northern District of Illinois 2008-2009
 Judicial Law Clerk (18 mo.)

Dahl & Bonadies 2008
 Associate Attorney

Brinks, Hofer, Gilson & Lione 2007
 Summer Associate

SERVICE

Peer Reviewer
 Food & Drug Law Journal
 JAMA
 Journal of Intellectual Property Law & Practice
 Journal of Law & the Biosciences
 Journal of Law, Medicine & Ethics
 Jurimetrics

Mentorship
 Faculty Advisor/Coach, 2024 Health Law Regulatory & Compliance Competition
 Faculty Advisor, 2024 USPTO Patent Drafting Competition
 Preceptor, Capstone of Joint JD-MPH Students at Northeastern University School of Law
 Student Mentor, Petrie-Flom Center, Harvard Law School (2021 – 2024)
 Coach, Saul Lefkowitz Trademark Moot Court Competition

Organizer
 Symposium: *The Politics of IP*, University of Texas School of Law (co-organizer) (2025)
 Junior Scholars Conference, Northeastern University School of Law (2024, 2025)
 Junior Scholars Workshop, Weekly Virtual Workshop (2020-2021)
 Regulation, Innovation, & the Biosciences Workshop, Northeastern University School of Law (2024)

Member
 CURE Drug Repurposing Collaboratory (CDRC) (2021 – 2024)
 Direct-to-Consumer Microbiome-Based Tests Multidisciplinary Working Group (2022)

Other Service Positions

Commentator, 6th Annual Health Law Works-in-Progress Retreat (2022)

Editorial Board, Food & Drug Law Journal (2022 – present)

Pro Bono Attorney, Lawyers for the Creative Arts (2016-2020)

PRESENTATIONS

Off-Label Inducement	2024
Junior Faculty Forum for Law and STEM (selected) University of Pennsylvania School of Law	
Annual Regulation and Innovation in the Biosciences (RIBS) Workshop Northeastern University School of Law	2024
Patenting Intended Use	
Intellectual Property Scholars Conference UC Berkeley School of Law	2024
Developing Drugs for a Developing Climate	2024
Law & Biosciences Workshop Stanford Law School	
Copyright's Missing Personality	
Ninth Copyright Scholarship Roundtable (selected) University of Pennsylvania School of Law	2024
IP Speaker Series (invited) George Washington University Law School	2024
Junior Scholars Conference Northeastern University School of Law	2024
Art Law Roundtable (selected) New England Law Boston	2024
Off-Label Preemption	
AALS New Voices in Law, Medicine, & Health Care	2024
AALS New Voices in Litigation	2024
AALS New Voices in Administrative Law	2024
AALS Law Professors with Disabilities and Allies Works-in-Progress	2024
Health Law Roundtable Center for Health Policy & Law, Northeastern University School of Law	2023
American Society of Law, Medicine, & Ethics Annual Law Professors Conference University of Maryland Francis King Carey School of Law	2023
Law & Biosciences Workshop Stanford Law School	2023
Regulatory, Innovation, & Biosciences Scholars Workshop	2023
Law's Grammar	
Junior Scholars Conference Northeastern University School of Law	2024

AALS Jurisprudence Junior Scholars Workshop	2023
AI and Medicine in the Post-COVID Era Harvard Medical School, MGH, Mass General Brigham	2023
Gatekeeping Drugs American Society of Law, Medicine, & Ethics Annual Law Professors Conference Arizona State University Sandra Day O'Connor College of Law	2022
6th Annual Regulation and Innovation in the Biosciences (RIBS) Workshop University of Iowa College of Law	2022
Law & Biosciences Workshop Stanford Law School	2022
Works-in-Progress Intellectual Property (WIPIP) Colloquium University of St. Louis School of Law	2022
Northeastern University School of Law Faculty Colloquium (invited)	2021
On Copyright Utilitarianism Eighth Copyright Scholarship Roundtable University of Pennsylvania Carey Law School (selected)	2023
Works-in-Progress Intellectual Property (WIPIP) Colloquium Suffolk University Law School	2023
Intellectual Property Scholars Conference Stanford Law School	2022
Society for Empirical Research in Copyright Annual Congress University of Colorado Law School	2022
Who Owns the Content of Generative AI? Weill Cornell Medicine-Qatar	2023
Drug Reimbursement by Public Payors in the U.S. C-Path Institute CURE Drug Repurposing Collaboratory (invited)	2023
Should Alexa Diagnose Alzheimer's? Virtual Advanced Healthcare at Home Summit (invited) Digital Medicine Society (invited)	2023 2022
Devices as Billboards Regulation and Innovation in the Biosciences (RIBS) Workshop (invited) University of Iowa College of Law	2022
The Legal and Policy Landscape of Drug Repurposing C-Path Institute CURE Drug Repurposing Collaboratory (invited)	2022
Informational Capacity, Regulation, and Certification Marks Trademark and Unfair Competition Scholarship Roundtable (selected) Harvard Law School, U. Pennsylvania Law School, NYU School of Law	2022

International Trademark Association Scholarship Symposium	2022
The Law & Economics of Trademarks Conference (invited)	2021
Texas A&M U. School of Law	
Emerging Trends in In-Home Digital Diagnostics	2021
Loyola University Chicago School of Law Seminar (invited)	
Lucky IP	
Intellectual Property Roundtable	2021
University of New Hampshire School of Law (selected)	
Off-Label Speech	
Wiet Life Science Law Scholars Workshop (selected)	2021
Loyola University Chicago School of Law	
ASLME 44th Annual Health Law Professors Conference	2021
Northeastern University School of Law	
Fifth Annual Health Law Works-in-Progress Retreat (selected)	2021
Seton Hall Law School	
Off-Label Innovation	
University of Cambridge, Faculty of Law (invited)	2021
18th Annual Works-in-Progress Intellectual Property Colloquium	2021
American University Washington College of Law,	
University of Utah S.J. Quinney College of Law, & Texas A&M U. School	
of Law	
New Voices in IP, American Association of Law Schools	2020
Junior Scholars Workshop	
Intellectual Property Scholars Conference	2020
Stanford Law School	
Drug Reimbursement: On- and Off-Label	2020
Critical Path Institute's CURE Drug Repurposing Collaboratory (invited)	
Provider-Based Solutions to Problems with Off-Label Prescriptions	2021
Third Annual IP & Innovation Researchers of Asia Conference	
Innovation, Off-Label Prescribing, and Intellectual Property Regimes	2020
Hanken School of Economics (invited)	
The Syntactic Structure of Legal Rights	
Political Philosophy Workshop	2020
University of Cambridge	
H.L.A. Hart Seminar	2021
University of Surrey Faculty of Law	
Copyright's Memory-Based Rights	2019

The Sixth Annual Intellectual Property Mosaic Conference Marquette University Law School Colloquium on Philosophical Approaches to Intellectual Property (invited) George Mason Law School	2019
A Structural Analysis of Intellectual Property Law Seminar on Intellectual Property Theory University of Kentucky College of Law (invited)	2019
Problems in Theory: Intellectual Property 17th Annual Works-in-Progress IP Colloquium Santa Clara University School of Law Hanken School of Economics, Helsinki, Finland (invited) The Fourth Annual Intellectual Property Mosaic Conference University of New Hampshire School of Law	2020 2019 2019
Distributing IP Lecture on Intellectual Property (invited) Hanken School of Economics	2019
Trademark Law & Consumer Safety Intellectual Property Scholars Conference DePaul College of Law	2019
Rx Marks (invited) DePaul College of Law	2018
Early Moral Rights Theorists in Copyright Law University of Cambridge, Faculty of Law	2012
Aspects of Intellectual Property Law and Licensing in the U.S. and Europe European School of Economics (invited)	2012
The Confusion Trap: Rethinking a Defense for Parody in Trademark Law Oxford Intellectual Property Discussion Group Oxford University	2011
An Empirical Analysis of Fair Use Decisions Under the Uniform Domain-Name Dispute-Resolution Policy Intellectual Property Scholars Conference DePaul College of Law Empirical Analysis of Law Seminar Harvard Law School	2011 2011 2010
Culture, Creativity, & Copyright 8th Annual Works in Progress Intellectual Property Colloquium	

	Boston University School of Law	2009
	Reasonable Perception and Parody in Copyright Law Intellectual Property Scholars Roundtable Drake University Law School	2009
	Teaching Without Infringement: A New Model for Educational Fair Use 7th Annual Works in Progress Intellectual Property Conference Seton Hall Law School	2009
	In Search of (Maintaining) the Truth: The Use of Copyright Law by Religious Organizations Intellectual Property Scholars Conference Cardozo Law School	
MEDIA	<i>The Supreme Court: The most powerful, least busy people in Washington</i> , VOX, May 2024 <i>What Prenuvo Scans Won't Tell You</i> , BUSTLE, February 2024 <i>The Bruce Willis Deepfake Is Everyone's Problem</i> , WIRED, October 2022 <i>More At-Home Tests Are Heading Your Way</i> , NEO.LIFE, September 2022 <i>Alexa Could Diagnose Alzheimer's and Other Brain Conditions – Should It?</i> , INVERSE, July 2022 <i>FTC resurrects a decade-old rule as a guardrail on the health app explosion</i> , THE VERGE, Sept. 22, 2021 <i>Your Property Taxes Are Likely Still Due, But Your Lender Might Have You Covered</i> , FORBES, April 15, 2020 <i>The messy legal scrap to bring celebrities back from the dead</i> , WIRED, Nov. 17, 2019	
BAR ADMISSIONS	Illinois Massachusetts District of Columbia (retired/inactive)	