



A Center for Law, Technology, and  
Entrepreneurship at the University of Colorado

## 2008-2009 Conference Schedule

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**Friday, September 5<sup>th</sup>, 1:00 PM**

**Deregulation Revisited: A Tribute to Fred Kahn**  
@ The University of Colorado Law School

**Friday, October 17<sup>th</sup>, 8:30 AM**

**The Structure of the Video Programming Industry:  
Revolution, Regulation, or The Return of Yesterday's Battles?**  
@ The Cable Center, Denver, CO

**Friday, November 14<sup>th</sup>**

**The Colorado Broadband Summit**

**Friday, December 5<sup>th</sup>**

**The Law and Ethics of Network Monitoring**  
@ The University of Colorado Law School

**February 8<sup>th</sup> & 9<sup>th</sup>, 2009**

**The Digital Broadband Migration:  
Imagining the Internet's Future**  
@ The University of Colorado Boulder

**Thursday, March 19<sup>th</sup>**

**Evaluating Software Patents**  
@ The University of Colorado Law School

For Registration and Additional Information:  
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## Friday, September 5<sup>th</sup>, 1:00 PM **Deregulation Revisited: A Tribute to Fred Kahn** **@ The University of Colorado Law School**

To say that Fred Kahn is the archetype and inspiration for the deregulatory policies that have transformed a series of network industries over the last thirty years is no exaggeration. His academic leadership and vision, captured in *The Economics of Regulation*, attracted needed attention and insights to a field long viewed as a staid exercise in natural monopoly regulation. At the New York Public Service Commission, Fred established a standard for leadership and thoughtful policymakers that elevated the role of such commissions across the country and began to change conventional thinking about telecommunications and electricity regulation. Finally, at the Civil Aeronautics Board, Fred Kahn took the helm of an agency on autopilot and re-evaluated the wisdom of command-and-control regulations that are widely viewed as preventing entry and protecting incumbents. In so doing, he not only helped to transform the regulation of airlines in this country, but made clear that enlightened leadership can make an enormous difference in public policymaking.

Thirty years after the singular accomplishment of spurring the enactment of the Airline Deregulation Act of 1978, it is an opportune occasion to reflect both on the deregulatory initiatives of the last thirty years and, in particular, on Fred Kahn's teachings and contributions to that effort. An increasing number of commentators who previously advocated deregulation "no longer believe that deregulation has been a complete, an unqualified, success," as Judge Richard Posner recently put it. This judgment begs a series of questions: what lessons can we learn from the deregulatory initiative in airlines, what to make of deregulatory efforts in telecommunications and energy, and whether the U.S. economy has indeed outpaced its foreign rivals in part because of its more nimble and less regulated market environment. In this conference, we will bring together a group of policymakers, former policymakers, academics, and industry leaders from across the last several decades to evaluate the legacy of deregulation, with particular attention to and appreciation for Fred Kahn's leadership and teachings in the area.

### Welcome 1:00pm - 1:15pm

Phil Weiser Executive Director, Silicon Flatirons

### Telecommunications:

#### Assessing the Lessons From the 1996 Telecom Act 1:15pm - 2:30pm

Dale Hatfield Adjunct Professor, CU, Former Chief Engineer, FCC  
Tom Hazlett Professor, George Mason University  
Tim Tardiff Managing Director, Huron Consulting Group  
Phil Verveer Partner, Wilkie Farr & Gallagher  
Dennis Weisman Professor of Economics, Kansas State University

#### Electric Power and the Challenges of Regulatory Reform 2:30pm - 3:45pm

Richard Cudahy Judge, Seventh Circuit Court of Appeals  
Raymond Gifford Partner, Kamlet Shepherd & Reichert  
Diana Moss Vice President and Senior Fellow, American Antitrust Institute  
Jeff Sterba CEO, Public Service Company of New Mexico  
Pat Wood Former Chairman, Federal Energy Commission

#### Airline Deregulation and Its Aftermath 4:00pm - 5:15pm

Sam Addoms Former CEO, Frontier Airlines  
Darius W. Gaskins, Jr. Partner, Norbridge  
Michael E. Levine Distinguished Research Scholar and Senior Lecturer, NYU Law  
Michael Roach Principal, Roach & Sbarra  
Dorothy Robyn Principal, Brattle Group

#### Closing Remarks 5:20pm - 6:00pm

Alfred Kahn



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**Friday, October 17<sup>th</sup>, 8:30 AM**

**The Structure of the Video Programming Industry:  
Revolution, Regulation, or The Return of Yesterday's  
Battles?**

**@ The Cable Center, Denver, CO**

The structure of the video programming industry is facing a perfect storm of technological change, increased competition, and calls for new regulation. Responding to these forces, both producers and distributors of video content are increasingly exploring new business models, ranging from streaming video to same day DVD release to video on demand. In some cases, these business models undermine established patterns of doing business and call into question existing regulatory policies. To explore this set of issues, this conference will bring together a group of industry leaders to examine the intertwined policy, business, and technological issues.

The conference will address the changing industry structure by focusing on three distinct set of themes--the opportunities and challenge of independent networks; the role of access regulation; and the impact of new technologies. In terms of the rise of independent networks, some view the challenges of the NFL Network and claim that the barriers to entry are simply too great. Others, however, suggest that the legacy model of cable networks is unsustainable in the face of continually rising programming costs and opportunities for distribution via the Internet. As to access regulation, the re-authorization of the program access rules and recently initiated proceeding looking at cable network bundling reflect concerns about market power and vertical integration. For the cable industry, the increasing regulatory attention at a time of increasing competition is difficult to understand. Any new regulatory initiatives (or continuation of old ones) must grapple with the impact of new technologies, particularly those related to the Internet, and the question of whether TV viewing will be liberated from the traditional delivery channels and available in multi-forms and in different media or will continue to rely on intermediaries in a world where viewing habits may well be stubborn and resistant to change.

**Welcome 8:30am - 8:45am**  
 Jana Henthorn Senior Vice President, Cable Center

**The Opportunities and Challenges for Independent Networks 8:45am - 9:45am**  
 Bridget Baker President, NBC/Universal Cable  
 Susan Fox Vice President for Government Relations, Walt Disney Company  
 Frank Hawkins Partner, Scalar Media Partners, Former SVP, NFL Network  
 David Zagin Executive Vice President, Distribution AETN

**Access Regulation: RSNs, Program Access, and Must Carry 9:45am - 10:45am**  
 Dan Brenner Senior Vice President for Law & Regulatory Policy, NCTA  
 Linda Kinney Vice President Law & Regulation, Echostar  
 Marsha McBride Executive Vice President, National Association of Broadcasters  
 Kathy Zachem Vice President, Comcast

**The Impact of New Technologies 11:00am - 12:00pm**  
 Richard Green CEO, Cablelabs  
 Andrew McFarlane CEO, Buzzwire  
 Ryan McIntyre Managing Director, Foundry Group  
 Peter Stern Executive Vice President, Business Strategy, Time Warner Cable

**Lunch and Keynote Speaker 12:00pm - 1:30pm**  
 Michael Copps FCC Commissioner



### Partners

- **Communications Technology Professionals**
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- **The Cable Center**
- **The Federal Communications Bar Association (FCBA)**
- **University of Colorado Alliance for Technology, Learning, & Society (ATLAS)**
- **University of Colorado Interdisciplinary Telecommunications Program (ITP)**
- **University of Colorado Law School**
- **Journal on Telecommunications and High Technology Law**
- **Entrepreneurial Law Clinic**
- **Glushko-Samuelson Technology Policy Law Clinic**
- **The University of Colorado Tech Transfer Office**

**Friday, November 14<sup>th</sup>**

## **The Colorado Broadband Summit**

In *The Colorado Promise*, then-candidate Bill Ritter set forth his commitment that the State should play an active role in promoting broadband deployment and adoption as a critical strategy for delivering public services more effectively (such as education and health care) as well as spurring economic development. After his election, Governor Ritter established the State's first Innovation Council and chartered it to, among other things, develop and oversee the State's broadband policy. Last spring, he encouraged the Colorado Legislature to enact Senate Bill 215, which charged the State's Chief Information Officer, in conjunction with the Innovation Council, with the mapping of where broadband connections are available throughout the State. This effort, which will be completed by the spring of 2009, will encourage broadband providers to serve parts of the State where broadband is not currently available and will enable the State to evaluate future broadband initiatives.

As part of the mapping initiative, the State's Chief Information Officer and Innovation Council are conducting a statewide outreach campaign that will culminate in the Broadband Summit. This Summit will bring together leaders in government, academia, and industry to evaluate the importance of broadband to our State and how broadband intensive applications can make a difference in areas ranging from education to health care to energy conservation. In addition to the array of experts and stakeholders who will participate in this event, Governor Ritter will deliver a lunchtime address and Level 3 CEO Jim Crowe will give a keynote address.

**Friday, December 5<sup>th</sup>**

## **The Law and Ethics of Network Monitoring @ The University of Colorado Law School**

Nearly every computer network—from the five-person office LAN to the giant corporate network and from the mom-and-pop ISP to the national broadband network—must be monitored. Because of ever-increasing threats and complexity, networks cannot survive unless they are watched. Administrators everywhere watch closely over reams of logfile entries created by routers, web servers, spam filters, packet sniffers, and deep-packet inspection firewalls.

All of this watching comes at a cost to user privacy, because these devices track and record the private behavior of users on the network. What are and what should be the limits to network monitoring, if any? A network engineer may argue that “it’s my network, so I can do what I want with it,” while a privacy activist might argue instead for common carrier privacy obligations for all ISPs. How do the wiretap laws govern network monitoring, if at all? Without having to resort to law, can systems administrators agree to a code of conduct that draws lines of monitoring across which they may not cross? Do these laws and ethical boundaries vary based on the type of network or the identity of person doing the monitoring, meaning different rules for employers, ISPs, researchers, and universities? Should they vary?



### **New Technology Meetups**

The monthly New Technology Meet-Up draws over 300 local entrepreneurs to the Law School's Wittmyer Courtroom for presentations by start-up companies.

### **Entrepreneurs Unplugged**

In spring 2008, Silicon Flatirons launched Entrepreneurs Unplugged, a monthly event to resume this September, which provides faculty and students with technical backgrounds the opportunity to meet and learn about entrepreneurship through the experiences of a local successful entrepreneur.

### **Roundtable Series on Entrepreneurship, Innovation, and Public Policy**

The roundtable series - - which gathers local business leaders, attorneys and academicians to discuss topics of pertinent interest - - is an important means of furthering Silicon Flatirons' goal of elevating the debate around entrepreneurship, innovation, and public policy issues.

### **Crash Course Series**

The Crash Course Series for Entrepreneurs provides focused lectures for the outside community, students and faculty about legal and business issues confronting entrepreneurs when launching new ventures.

### **University of Colorado at Boulder Business Plan Competition**

The annual competition, which will provide hands-on experience for developing a plan for a successful venture, will help further our goal of fostering viable start-ups to emerge from the university and surrounding community.

**February 8<sup>th</sup> & 9<sup>th</sup>, 2009**

## **The Digital Broadband Migration: Imagining the Internet's Future @ The University of Colorado Boulder**

The Internet's development has amazed even its early pioneers and its ability to confound skeptics suggests that calls for change should be taken with a grain of salt. At the same time, it seems difficult to imagine that the Internet's future will not feature any number of innovations that will change how it operates. Indeed, issues such as security, mobility, increased machine-to-machine communications, and the advent of real-time applications challenge some of the design principles of the current Internet. In any event, the network of the future will be shaped not merely by technological change, but also economics, the needs of users, and policy directives.

This conference will imagine the Internet's future, discuss its economic and social implications, and contrast different prescriptions for Internet policy. It will do so by bringing together a top flight group of academics, policymakers, and industry leaders to discuss these issues along four dimensions. First, we will evaluate the technological, economics, social, and policy challenges that are emerging on the horizon. Second, we will discuss the changing architecture of the Internet, the role of network management, and the significance of the transition away from an end-to-end architecture. The third panel will evaluate whether existing institutions--be they the Federal Trade Commission, the Federal Communications Commission; standard setting bodies like the Internet Engineering Task Force; self-regulatory bodies; or private contracting--are up to the task of overseeing Internet communications, including ensuring the reliable service delivery across different networks. The final panel will discuss the major changes in how the Internet serves consumers and how the market for Internet content is evolving. In all discussions, we will bring together the related technological, business, and policy themes that are shaping the Internet and the future of innovation in the information industries.

**Thursday, March 19<sup>th</sup>**

## **Evaluating Software Patents @ The University of Colorado Law School**

Over the last several years, the Supreme Court and the Federal Circuit have taken a number of steps suggesting that the law governing software patents is still very much in flux. In terms of the scope of patent law's reach (Bilski) to applicable remedies (Ebay), the courts have taken seriously concerns about the state of the patent system and its impact on innovation the software and information technology sectors. At the same time, Congress--spurred by a coalition of IT firms--has considered a number of reform measures geared to address concerns that the patent system is rewarding bad patents and encouraging inefficient litigation.

In this conference, we will evaluate both the premises underlying the call for a fundamental reform--and, indeed, the possible abolishment of--software patents as well as some specific suggestions for changing how patents are granted and how patent litigation operates. In particular, we will evaluate whether software patents should exist at all, whether patent litigation serves a constructive role in facilitating innovation and commercialization of new technologies, and whether patents play an important role in spurring the development of new technologies and enabling start-up firms to attract financing. It will conclude with a roundtable of three leading commentators on the role of patents and innovation.



## Letter from the Executive Director

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I continue to be amazed by and delighted with the progress Silicon Flatirons continues to make. The successes over the past year have bolstered our status as one of the nation's most comprehensive programs oriented around the Internet revolution. I can only hope that we continue to enjoy such growth and opportunities in the year ahead. This year marked a number of exciting new developments that I'd like to review in addition to looking ahead at 2008-2009.

### **The Silicon Flatirons Center for Law, Technology, and Entrepreneurship**

Using some of the entrepreneurial skills we endeavor to impart to our students, the Silicon Flatirons Telecommunications Program embarked on a reverse merger with the Entrepreneurial Law Center that, in effect, we had operated as a parallel organization. As a result, we have now made official our focus on issues at the intersection of law, technology, and entrepreneurship while keeping our old moniker, "Silicon Flatirons." So voila, we are now the Silicon Flatirons Center for Law, Technology, and Entrepreneurship and the acronym SFTP is no longer (and now replaced by SFC). But you can just call us Silicon Flatirons—even with a new and improved [website](#) that our crack webmaster and 2L Blake Reid masterminded. We are also incredibly lucky to have a first-rate administrator in Anna Noschese who has enhanced our effectiveness greatly.

### **An Expanded Silicon Flatirons Roster**

Over the last several years, we have recruited a number of talented faculty members and fellows who have broadened our expertise and reach. As I discussed last year, [Paul Ohm](#)'s reputation continues to grow and he is a force within Silicon Flatirons. Notably, his first article, [The Myth of the Superuser](#), was downloaded over 1,000 times on SSRN. In terms of Silicon Flatirons, Paul took the lead on the [Software Regulation Clearinghouse](#) as well as on two roundtables on Entrepreneurship, Innovation, and Public Policy—one on electronic discovery and another one privacy and data security.

[Brad Bernthal](#) is another superb asset. Brad is no stranger to Silicon Flatirons, having worked two years as our first fellow, but he is new to our faculty following his hire by Colorado Law as an Associate Clinical Professor this year. Brad also serves as the Director of our Entrepreneurship Initiative. In that capacity, he not only teaches our [Entrepreneurial Law Clinic](#) (supported by [Hogan & Hartson LLP](#)) and Venture Capital Law class, he also oversees the Law School's certificate in entrepreneurial law and directs our increasing array of entrepreneurial-directed offerings, which I discuss below. On top of that, he also coaches two moot court teams (one on telecom law and one on trademark law), teaches a Spectrum Management course with [Dale Hatfield](#), and directs the [Glushko-Samuelson Technology Policy Law Clinic](#). Quite simply, we are lucky to have someone on board who does not need any sleep.

Our bench is getting deeper next year, thanks to some wonderful additions. We lost part of [Jill Van Matre](#)'s time, as she joined ATLAS as its Associate Director. This was truly a win for us, too, as we are working ever more closely with ATLAS, supporting its mission of driving a cross-campus awareness of how information technology is transforming our society. Notably, ATLAS has joined our [Entrepreneurship Initiative](#) as a co-sponsor. And Jill is still a critical asset to us, directing the [Institute of Regulatory Law and Economics](#) and spearheading other initiatives, like our partnership with the [US Telecom Training Institute \(USTTI\)](#). With Jill's time more scarce, we have hired another Research Fellow, Jill Rennert, who is spearheading our emerging entrepreneurship initiative. Jill Rennert is already off to a great start, planning the successful Entrepreneurs Unplugged event we held last April and laying the groundwork for a cross-campus Business Plan competition which will be the centerpiece of a Spring 2009 Entrepreneurship Week at the University of Colorado.

On the faculty front, we are, in effect, doubling our size this year. First off, [Scott Peppet](#), a longstanding faculty member now affiliated with Silicon Flatirons, has moved full force with his research agenda into issues related to

entrepreneurship and the impact that technological change has on our economy and society. Second, [Harry Surden](#), fresh off a fellowship at Stanford, will join our faculty and teach in the intellectual property area. Third, [Andrew Schwartz](#), formerly of the New York City law firm of Wachtell, Lipton, Rosen & Katz, agreed to join our faculty and teach in the business law area and research issues at the intersection of technology and business. To top it off, we also officially constituted a group of [affiliated faculty](#) who are engaged in our various research, outreach, and educational efforts.

Providing critical support are our Adjunct Fellows, each of whom bring invaluable talents to our programming and operations. [Ray Gifford](#) remains an essential part of our mission and success, co-teaching a seminar with me this spring on the Law and Economics of Utility Regulation, co-directing the IRLE, and participating in a number of programs. [Tom Lookabaugh](#), although no longer full-time with the University, remains an incredibly valuable advisor, supporter, and friend of the Program. Tom's interests across the wide expanse of our mission—entrepreneurship, telecommunications policy, and information technology & intellectual property issues—make him uniquely qualified to help us remain on track. [Pierre DeVries](#), a true renaissance man, brings enthusiasm, perspective, and ambition as our first out-of-state Adjunct Fellow and has taken a leadership role in developing our Flatirons Summits on Regulatory Policy. Finally, [Bryan Tramont](#) has shown a remarkable dedication to Silicon Flatirons, leading our fundraising efforts for the [Hatfield Scholars & Research Program](#) as well as teaching every summer in our Spectrum Policy course. We are very lucky to have them all as participants in our work.

### **Initiatives and Programs Which Continue To Elevate the Debate**

A primary goal of Silicon Flatirons is to contribute to and elevate information policy debates. Over the last year, we have undertaken a number of initiatives that enable us to offer valuable insights, support to policymakers, and develop opportunities for students to engage in and prepare for public policy work.

First off, we are delighted with the initial success of the [Glushko-Samuelson Technology Policy Law Clinic](#), which a generous gift from Bob Glushko and Pam Samuelson made possible last year. Already, Brad Bernthal has enabled the students in the clinic to take on a variety of interesting projects, including a visit to the FCC and Capitol Hill (made possible by generous support from [Patton Boggs](#)), and two projects in connection with the [Colorado Innovation Council](#) that is focused on promoting broadband deployment in Colorado. For those students who have a hankering to stay longer in Washington D.C., we offer them summer stipends through the Hatfield Scholars and Research Fund, which was endowed in honor of Dale Hatfield. In a show of support for Dale, over 200 people came to a reception in spring 2008, raising yet more money for the Fund and thereby enabling even more students to gain access to such stipends.

Over the last year, Silicon Flatirons took over sole responsibility for the [Institute for Regulatory Law & Economics \(IRLE\)](#). This meant that we fully organized and planned the yearly conference held in Aspen each May as a five day crash course in law and economics for state regulators. This past year, we had another terrific program, with a very distinguished array of participants and an appreciative group of state regulators in attendance. We also added another component of the IRLE this year—a workshop for law professors interested in learning more about [New Institutional Economics](#). This event was a great success and one that we expect to make a tradition as well.

In another new initiative directed abroad, Silicon Flatirons, working in partnership with the US Telecommunications Training Institute, offered international telecommunications executives and regulators an intensive one week course on Managing in An Era of Technological Change. This mini-course, which we made available to ITP students as well (and is available for distance learning students), was a great success, bringing together a number of our top faculty members and adjuncts to present the class with an interdisciplinary and very engaging set of presentations.

Our final frontier in the information policy realm is the set of programs we held around issues that will confront the next administration. This project began with our Digital Broadband Migration focused on "[Information Policy for the Next Administration](#)." Once again, we had a terrific set of discussions and there are

terrific set of papers that will be published in the next issue of the [Journal of Telecommunications and High Technology Law](#). A second initiative was the ongoing development of our Flatirons Summits on Information Policy. These summits, which bring together a group of individuals from across academia, industry, government, and public interest groups, hash through difficult issues and seek to develop thoughtful insights as well as consensus on key policy issues. In June, we held two such summits—one on Public Safety Communications and another one Self Regulatory Approaches for Addressing Network Management—and produced an ex parte filing as a result of the first one as well as a comprehensive report as a result of the second one. The [public safety communications](#) focus followed a series of activities on that front, including a conference from last [November](#), an [article](#) that resulted from a previous Summit, a [study](#) evaluating the opportunities for upgrading the 911 system, and testimony to the U.S. Senate on such issues by [Dale Hatfield](#) and [myself](#).

Finally, we co-sponsored three events during the DNC Convention in Denver—the Rocky Mountain Roundtable on Technology Policy; Public Safety and Government Broadband; and Intellectual Property Policy and The Presidential Campaign. And, to top things off, we will hold our first ever conference in Washington, D.C., working with the [Information Technology and Innovation Foundation](#) on a program discussing “[Innovation Economics for the Next Administration](#).”

### **The Silicon Flatirons Entrepreneurship Initiative**

Finally, we are embarking on a new and exciting [Entrepreneurship Initiative](#). This effort, which continues to develop momentum, includes our sponsorship of the Series on Entrepreneurship, Innovation, and Public Policy, the New Technology Meetup, the Entrepreneurs Unplugged series, the Crash Course for Entrepreneurs Series, and the first ever campus-wide Business Plan Competition. We will formally announce the Business Plan competition and outline the Initiative—which is a partnership with ATLAS, the Deming Center for Entrepreneurship, the Engineering Management Program, the Interdisciplinary Telecommunications Program—on Thursday, October 23<sup>rd</sup> in conjunction with the Unplugged event held that night. This initiative will hit its stride during the week of April 13<sup>th</sup>, when we hold our first ever Entrepreneurship Week. We are very fortunate to have the participation and support from local entrepreneurial leaders like [Brad Feld](#), [Jason Mendelson](#) and [Dan Caruso](#) and look forward to building on this effort going forward. For more information about the Initiative, please see our website and the more extensive writeup in the September newsletter.

As I noted at the outset, it is heartening how much we are able to accomplish and I very much appreciate all of the support we have enjoyed over the last eight years. If you have other suggestions for ways we can improve and grow, please feel free to email me ([phil.weiser@colorado.edu](mailto:phil.weiser@colorado.edu)) or give me a call (303.735.2733).

Cheers,



Phil Weiser

**For Additional Information:**  
<http://www.silicon-flatirons.org>