

Webinar:

"The Future of Copyright's Substantial Similarity Doctrine: Insights from the En Banc Rehearing in *Sedlik v. Von Drachenberg*"

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1:30 - 3:00 PM EDT

Hosted via Teams Webinar



Bruce Boyden

Associate
Professor of Law,
Marquette
University Law
School

*Amicus in
support of
neither party*



**Eleanor M.
Lackman**

Partner, Mitchell
Silberberg &
Knupp LLP

*Co-Chair of
MSK's Intellectual
Property Practice
Group*



Bill Patry

Of Counsel, Quinn
Emanuel Urquhart
& Sullivan, LLP

*Co-counsel for
plaintiff-appellant
Jeff Sedlik &
author of
Patry on Copyright*



Dr. Jessica Silbey

Associate Dean for
Intellectual Life, Professor
of Law, Hon. Frank R.
Kenison Distinguished
Scholar in Law, Boston
University School of Law

*Amicus supporting
appellees and affirmance*



Sandra Aistars

Distinguished
Counselor in
Residence
and Professor
of Law, IPPI

*Panel
Moderator*

Join counsel and amici participating in *Sedlik v. Von Drachenberg*, No. 24-3367 (9th Cir. 2026) for an analysis of the Ninth Circuit's en banc rehearing just days after oral argument.

The Ninth Circuit has granted rehearing en banc in a closely watched copyright dispute involving two members of the creative community: an independent photographer who created an iconic portrait of Miles Davis and a tattoo artist who later tattooed an image alleged to infringe that photograph on a client's arm.

The case centers on the Ninth Circuit's two-part extrinsic/intrinsic test for substantial similarity. The extrinsic component is objective and may be decided by a judge with the aid of expert testimony. The intrinsic component, however, remains controversial because it asks whether an ordinary observer would regard the works as substantially similar in their "total concept and feel."



Some judges have questioned whether the framework creates an asymmetry that disadvantages copyright owners. The en banc court's decision may have significant implications for copyright litigation both within the Ninth Circuit and beyond.

The panel will provide a first-hand report on oral argument, discuss whether and how the substantial similarity standard might change, examine the practical consequences of any change for litigants and creators, and consider how copyright infringement risks should be evaluated.