

GIBSON DUNN

Presentation to:

The ICANN IANA Cross
Community Working Group

February 13, 2015





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Introduction

We greatly appreciate the opportunity to be considered as counsel to provide legal advice to the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (the “CWG”) in response to the National Telecommunication and Information Administration’s announcement that it would transition its oversight of the IANA Functions to the “global multistakeholder community.”

Our proposed team is comprised of attorneys who have deep experience in all aspects of the proposed representation. The team would be led by John Olson, who is widely recognized as one of the leading governance lawyers in the world, with what *Chambers* has described as “a big-picture view you develop by practicing at the highest level for decades.” As explained in greater detail below, John has previously served as outside advisor to not-for-profit entities and their trustees in connection with some of the most substantial, complex governance matters in recent decades, including representations of the **American Red Cross**, the **United States Olympic Committee**, and the independent trustees of **Kamehameha Schools/Bishop Estate**, a \$12 billion trust that is the largest landowner in Hawaii. Mr. Olson serves as a member of the International Reference Team that has advised the **Government of South Africa** on revisions to South Africa’s Companies Law. For five years, he chaired the **Corporate Governance Committee** of the American Bar Association Business Law Section, and for nine years has been a Distinguished Visitor from Practice at **Georgetown University Law Center**, teaching an advanced seminar on the governance of nonprofit organizations. He has also been elected Chair of the Board of Trustees of the newly formed **American College of Governance Counsel**. John would be primarily supported by Gillian McPhee, who focuses her practice on governance matters and securities regulatory issues, and has published extensively on corporate governance matters.

Because the CWG is considering alternatives ranging from an internal solution within ICANN, a California nonprofit public benefit corporation, to external solutions involving entities in California (or other jurisdictions), we also propose working with attorneys in our Los Angeles office, led by Bradford Weirick, who co-chairs our Emerging Technologies Practice Group. Brad would be primarily supported by Ben Ross, who has practiced in California and New York and clerked in Delaware. Brad and Ben have recently provided legal advice in connection with the creation of **Westwood Technology Transfer**, a California nonprofit public benefit corporation charged with managing and supervising the sponsored research and technology transfer activities of the **University of California – Los Angeles**.

We are also conscious of the fact that this process will be closely watched by numerous constituencies in the business, academic, Internet, and other e-commerce communities, as well as by traditional media, new media outlets, and government agencies around the globe. As a result, we would propose adding to the team Howard Hogan from our Washington, D.C. office. Howard has written extensively about the domain name system and has litigated many of the cases that first applied traditional legal principles to the domain name system. And we would be able to draw on the expertise of our colleagues in offices around the globe as necessary, including Judith Lee, who co-chairs the firm’s International Trade Practice Group and has previously advised ICANN in connection with issues related to Office of Foreign Assets Control Compliance and other international trade issues.

We submit the following materials to provide further information about our expertise, and to demonstrate why we believe we are the team best positioned to advise the CWG on this historic process.



Overview of Engagement

As part of our engagement, Gibson Dunn will bring to bear the methods successfully applied in resolving similarly complex governance matters. We would plan, design, and adapt such processes alongside the CWG, as well as any of its applicable subcommittees, advisory groups, and other outside groups or constituencies that the CWG determines should be included as part of the process. Moreover, Gibson Dunn will be able to meet whatever timeline is required by the CWG, no matter how extensive or streamlined the CWG determines that the process should be. To initiate the process, we have described a series of possible steps below:

1. Review historical materials, including charters, agreements, presentations, and transcripts.
2. Conduct interviews to gain a nuanced understanding of the alternative structures being considered (the “external” and “internal” options), and the key issues to be considered, in evaluating possible governance structures. We would work with CWG to identify an appropriate group of interviewees who would be in a position to provide input on strategic, governance, regulatory, technical, and other matters that may inform choices relating to the governance structure, as well as external stakeholders who may be impacted by any transition proposal.
3. In coordination with the CWG, meet with representatives of the National Telecommunication and Information Administration to understand past governance issues and transition challenges.
4. Consider and analyze potential governance structures, and identify the potential benefits and limitations of each structure from legal, practical, and other perspectives. This would include a review of the “external” and “internal” solutions, as well as consideration and evaluation of other structures and practices. We could also survey organizations similar to ICANN to review their practices and identify elements that may be useful for evaluating transition alternatives.
5. Based on our review and analysis of the possible alternatives, we would prepare a set of preliminary recommendations to present to the CWG. The recommendations could take whatever form would be most useful to the CWG, such as written reports or interactive presentations to key decision makers. We would meet with you to discuss the preliminary recommendations and revise them as appropriate to reflect your feedback, so that the CWG would have a final recommendation for review and approval by all relevant parties.
6. Work with the appropriate stakeholders to implement the new governance structure once it is chosen. We could assist the stakeholders with any aspects of this process, including counseling on various issues that may arise in establishing the structure, forming legal entities, preparing governance documents, and negotiating relevant agreements.



Firm Capabilities

Gibson, Dunn & Crutcher LLP is a full-service global law firm, with over 1,200 lawyers in 18 offices worldwide, including nine offices in major cities throughout the United States and over 100 lawyers in our London, Paris, Munich, Brussels, Dubai, Beijing, Hong Kong, Singapore, and São Paulo offices. We are recognized for excellent legal service, and our lawyers routinely represent clients in some of the most complex and high-profile transactions in the world. We consistently rank among the top law firms in the world in published league tables.




We will work tirelessly on the matters you have entrusted to us. We believe in developing strong, long-term client relationships and are well positioned to provide you with superior service throughout the world.

We focus on client service: Gibson Dunn is one of the top firms in the BTI Client Service 2014 Survey, which named seven Gibson Dunn partners to its 2014 BTI Client Service All-Stars list, featuring “an elite group of standout attorneys” identified exclusively by corporate counsel as those who provide “the absolute best client service.”

Recent highlights of the firm include:

- *The American Lawyer* ranked Gibson Dunn third on its 2014 A-List of the 20 law firms it considers the most elite in the country. The rankings are determined by financial performance, associate satisfaction, commitment to pro bono, and diversity. This is Gibson Dunn’s ninth consecutive year on the A-List.

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- *Corporate Board Member* magazine and FTI Consulting ranked Gibson Dunn in their 2014 America's Best Corporate Law Firms study.
 - *Chambers USA: America's Leading Lawyers for Business* 2014, an independent, research-based survey, awarded Gibson Dunn 250 rankings, with the firm and its attorneys achieving a total of 71 first-tier rankings, 24 of which were firm practice group rankings.
 - *Law360* named Gibson Dunn a 2014 Law Firm of the Year, one of two firms named for this distinction.
 - *The Best Lawyers in America*© 2015 recognized 150 Gibson Dunn leading lawyers, including Mr. Olson, across 49 practice areas. *Best Lawyers* is based on a peer-review survey of more than 50,000 leading attorneys. Mr. Olson has been listed in *The Best Lawyers in America*© in every edition of the survey since it was initiated 1983.
 - *Chambers Global Directory* 2014 recognized Gibson Dunn with 32 firm rankings and 87 individual rankings. The firm and its attorneys were recognized globally and in the Asia Pacific, Latin America, and Middle East regions. The firm also was recognized in Belgium, Brazil, Brunei, China, France, Germany, Greece, India, Indonesia, Mongolia, Singapore, the United Arab Emirates, the United Kingdom, and the United States.
 - Gibson Dunn's clients include most of the Fortune 100 companies and nearly half of the Fortune 500 companies.



Governance Practice

Gibson Dunn has one of the leading governance practices in the country. Our governance expertise is consistently acknowledged by *Chambers USA: America's Leading Lawyers for Business*, the *Guide to the World's Leading Corporate Governance Lawyers*, and the *International Who's Who of Corporate Governance Lawyers*.

We provide advice to a host of corporations and nonprofit organizations on a broad array of governance-related matters, including composition, procedures and responsibilities of boards of directors and their committees, charter and bylaw provisions, analysis of director independence and fiduciary duty issues, D&O indemnification and insurance issues, and governance best practices. Our corporate governance clients have included leading public companies, such as Prudential Financial, The Coca-Cola Company, Comsat Corporation, General Electric, Anthem, Business Roundtable, BP plc, Tenet Healthcare, Union Pacific and UPS. Our nonprofit representations have included organizations with diverse missions and governance structures, including the American Red Cross, the United States Olympic Committee, the Special Olympics, the Milton Hershey School, The Big East Conference, Georgetown University, and PBS.

Our attorneys draw upon extensive experience in corporate and nonprofit governance matters to provide advice that integrates both current best practices and practical judgments to address complex situations that pose regulatory, liability, and execution risks. Our attorneys are active in developing and reviewing governance policies, and have expertise in tailoring governance documents and practices to client needs. Particularly in counseling nonprofit organizations and their boards, our attorneys are keenly aware that there is no “one size fits all” approach to governance, and that governance structures and practices will vary depending on a variety of factors, such as an organization’s size, mission, and the stakeholders it serves. We have significant experience working with large, complex nonprofit organizations to provide advice and develop governance practices and solutions that are appropriate in light of individual needs and objectives.


Significant nonprofit representations in recent years include:

- Serving as governance advisor to the independent trustees of **Kamehameha Schools/Bishop Estate**, a \$12 billion trust that is the largest landowner in Hawaii, and is operating under supervision of the Probate Court and court-appointed Master. The trustees retained John Olson to review and recommend enhancements to the organization’s governance practices, which resulted in the issuance of an expert report of almost 100 pages.
- Conducting a governance audit of the **American Red Cross**, led by John Olson, that resulted in a comprehensive report, titled “Governance for the 21st Century,” and amendments to the Red Cross charter and governance documents. The charter amendments required federal legislation agreed to by both houses of Congress and the President.

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- Advising **The Big East Conference** (a college athletic conference) on its governance structure and practices and significant changes to state nonprofit law.
 - Providing legal advice on corporate governance to the **United States Olympic Committee's** independent advisory committee.
 - Advising the **Milton Hershey School** and **Hershey Trust Company** on governance matters relating to oversight of their nearly \$5 billion investment in **The Hershey Company** and their representation on that company's board.
 - Advising in the formation of an independent California nonprofit public benefit corporation, **Westwood Technology Transfer**, to manage and supervise the sponsored research and technology transfer activities of the **University of California – Los Angeles**. We navigated through a complex thicket of conflict of interest regulations and negotiated an arm's-length technology management agreement between Westwood Technology Transfer and the **Regents of the University of California**.
 - Advising in the formation and ongoing governance of the **Global Impact Investing Network ("GIIN")**, an entity operating under the fiscal sponsorship of the **Rockefeller Philanthropy Advisors ("RPA")**. GIIN is a not-for-profit organization dedicated to increasing the scale and effectiveness of impact investing.
 - Advising in the formation and the ongoing governance and conservation projects of the **Tejon Ranch Conservancy**, a California nonprofit public benefit corporation created by multiple public and private stakeholders, including the Tejon Ranch Company, Audubon California, Endangered Habitats League, Natural Resources Defense Council, Planning and Conservation League, and Sierra Club.

Awards and Accolades:

- **The National Association of Corporate Directors** named John Olson to its NACD Directorship 100: The Most Influential People in the Boardroom and Corporate Governance Community," which "recognizes top corporate directors and governance leaders who significantly influence boardroom practices and performance," for five straight years (2009-2013). In 2013, John was recognized for lifetime achievement in corporate governance by election to the NACD/Directorship Magazine, Corporate Governance Hall of Fame.
- **BTI Consulting Group** named John Olson to its Client Service All-Stars list for 2015, and John has made the All-Stars list from 2010 through 2012. Brian Lane and Ron Mueller were named to the 2014 Client Service All-Stars list for delivering "the absolute best client service" and demonstrating attributes such as "putting the clients' needs first" and "understanding the clients' legal and business objectives."
- **Corporate Board Member** magazine's "America's Best Corporate Law Firms" study consistently ranks Gibson Dunn among the top U.S. corporate law firms. The annual study is "a comprehensive ranking by U.S. corporate directors and general counsel of the top 25 corporate law firms."

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- *International Who's Who of Corporate Governance Lawyers* selected six Gibson Dunn partners, including Mr. Olson, as experts and noted that Gibson Dunn's securities regulation and corporate governance practice includes lawyers who are "considered key figures in this field."
 - *The Guide to the World's Leading Corporate Governance Lawyers* has recognized a number of Gibson Dunn partners, including John Olson, among the nation's leading corporate governance attorneys for the past several years.
 - *The American Lawyer* ranked Gibson Dunn third on its 2014 A-List, an annual list featuring 20 law firms considered the "most well-rounded of their Am Law 100 peers . . . who not only delivered strong financial performance but also sustained a top-notch firm culture. In short, the total package." The A-List is based on four factors: revenue per lawyer, pro bono, diversity, and associate satisfaction. This is Gibson Dunn's ninth consecutive year on the A-List.

Other Matters in Which Mr. Olson and Other Proposed Team Members Have Provided Advice Include:

- Counsel to **Alderwoods'** Audit Committee.
- Counsel to **Altria Inc.'**s Audit Committee; represented its Compensation Committee and served as special strategic planning counsel.
- Counsel to **Bearingpoint** Audit Committee on response to "whistleblower" allegations and other matters.
- Counsel to the **Business Roundtable's** Corporate Leadership Initiative.
- Counsel to **Cigna Corporation's** Audit Committee.
- Independent counsel to **The Coca-Cola Company's** Audit Committee for more than 25 years.
- Represented **Comsat Corporation's** Board and Audit Committee in consideration of management changes.
- Advised **General Electric Company** Board Committees on various corporate governance issues and assessment of shareholder litigation.
- Counsel to **Marriott International** on corporate governance matters.
- Advised the Board of Directors of **McGraw-Hill Financial** regarding structural issues.
- Counsel to **MGIC Investment Corp.** on various corporate governance issues.
- Advised the Audit Committee of **Mills Corporation** as special counsel.
- Counsel to **Prudential Financial, Inc.** on corporate governance best practices.



- Advised the Board of Directors and Audit Committee of **Textron Inc.** on corporate governance matters.
- Represented **Union Pacific Corporation**'s Nominating and Corporate Governance Committee.
- Represented **United Parcel Service, Inc.**'s Strategic Planning Committee and served as Corporate Governance counsel.
- Counsel to **Anthem** (formerly WellPoint, Inc.) on corporate governance matters.

Professional Profiles

John F. Olson




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John F. Olson is a founding partner of Gibson, Dunn & Crutcher's Washington, D.C. office. Mr. Olson represents business organizations in corporate governance, corporate securities, corporate finance and merger and acquisition matters. He has counseled many boards of directors and board committees on governance issues and in assessing shareholder litigation, responding to business combination proposals and conducting internal investigations. He has represented firms and individuals before the Securities and Exchange Commission and other federal agencies in both regulatory matters and enforcement investigations.

Mr. Olson is a member of the American Bar Association (ABA) Standing Committee on Government Affairs. Mr. Olson served (2000-2005) as Chairman of the ABA Business Law Section's Committee on Corporate Governance, and as a member of the Presidential Task Force on Corporate Responsibility appointed by the President of the ABA. Previously, he was Chairman of the ABA's Committee on Federal Regulation of Securities (1991-1995). Mr. Olson chaired the Business Law Section's Task Force on Regulation of Insider Trading, which produced a comprehensive report on U.S. insider trading law, and chaired the Task Force which produced the third (2001) and fourth (2004) editions of *The Corporate Director's Guidebook*. He served for eighteen years as a member of and liaison to the ABA's Committee on Corporate Laws, and served as a member of the Council and of the Publications Board of the ABA Business Law Section.

Mr. Olson is a member of the Executive Council of the Federal Bar Association Securities Section, served for nine years on the Legal Advisory Committee of the New York Stock Exchange and was a member of the Legal Advisory Board of the National Association of Securities Dealers. He was a Founding Trustee of the American College of Investment Counsel. He served on a select committee of leading securities lawyers, appointed by the chairman of the Senate Banking Committee, which drafted insider trading legislation introduced in the United States Congress.



Professional Profiles

In 2006, Mr. Olson led a team of the firm's lawyers that advised the Board of the American Red Cross on a comprehensive audit of its governance practices. He has also advised the United States Olympic Committee and a number of other nonprofit organizations on governance issues.

For six years (2009-2014), Mr. Olson was selected by the National Association of Corporate Directors (NACD) and *Directorship* magazine as one of the "Directorship 100: The Most Influential People in the Boardroom." In addition, Mr. Olson was elected to *NACD/Directorship Magazine's* Corporate Governance Hall of Fame in 2013. He is regularly ranked one of the top securities advisory attorneys in the District of Columbia by *Chambers USA* and has been listed every year since 2007 in *Who's Who of Corporate Governance Lawyers* by *Who's Who Legal*. Mr. Olson was ranked as one of the world's leading Corporate Governance attorneys in *Expert Guides' 2014 Guide to the World's Leading Banking and Finance Lawyers*. He was named the Washington, DC Corporate Law Lawyer of the Year for 2013 and the Washington, DC Corporate Governance Law Lawyer of the Year for 2012 by *The Best Lawyers in America*®. That publication has listed Mr. Olson for his corporate, securities and governance work in every edition published since its inception 30 years ago. Mr. Olson has been named three times by BTI Consulting as a national Client Service All Star for his "true thought leadership; innovation; creativity applied to the client; focused, practical problem-solving; valued counsel; responsiveness and accessibility; total commitment to the client."

A frequent lecturer at legal and business seminars, Mr. Olson co-chairs several programs on an annual basis. He is on the planning committees for the San Diego Securities Regulation Institute and the Practising Law Institute's Annual Securities Regulation Institute. He is the author of more than 100 articles and a member of the editorial advisory boards for a variety of securities and corporate law publications. Mr. Olson is the co-author of *Director and Officer Liability: Indemnification and Insurance*, published by West Publishing (revised 2002) and has edited several other books on securities law issues.

Mr. Olson was the Distinguished Visiting Practitioner in Residence at Cornell Law School in 2003, and from 2005 through 2007 taught corporate governance at Northwestern University School of Law. He is currently a Distinguished Visitor from Practice at Georgetown University Law Center, teaching advanced seminars in securities regulation and governance of nonprofit organizations.

Mr. Olson is a member of the International Reference Team for Company Law Reform in South Africa.

Bradford P. Weirick



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Bradford P. Weirick is a partner with Gibson, Dunn & Crutcher in its Los Angeles office. He is Co-Chairman of the firm's Emerging Technologies Practice Group and a member of the firm's Corporations Department, focusing on general corporate representation, corporate governance, mergers and acquisitions, private equity investment transactions and public and private securities offerings.

Mr. Weirick has substantial experience advising corporate boards and corporations in connections with corporate governance, board processes, acquisitions, divestitures, strategic transactions and financing transactions. Mr. Weirick serves as outside counsel to Westwood Technology Transfer, a nonprofit affiliate of UCLA formed for the purpose of managing all industry sponsored research, patent prosecution, licensing and commercialization with respect to intellectual property developed at UCLA. In the technology sector generally, during the past few years, Mr. Weirick has represented The Rubicon Project, Investcorp Technology Partners, ValueClick, Inc., TeleSign, Montgomery & Co., Conduvis Corporation, Idealab, Fleetmatics, Telepacific, Mulu, eSolar, Objectstar, Softek, Airwave Wireless, Praedicat, Metalogix, Search Optics and Technicolor in connection with acquisitions and strategic transactions; March Capital, Rustic Canyon Ventures, L.P., Investcorp Venture Capital, Montgomery & Co., Intel Capital and Celerity Partners, L.P. in connection with numerous private equity/venture investments; and various private venture-stage companies in connection with general corporate matters, venture capital financings and acquisitions.

Mr. Weirick joined the firm in 1986 after earning his law degree from the University of California, Berkeley, School of Law. Mr. Weirick did his undergraduate work at Dartmouth College, where he graduated *magna cum laude* and was a member of the Phi Beta Kappa honor society.

Mr. Weirick has been listed in the 2008-2014 editions of *Chambers USA: America's Leading Lawyers for Business* as a leading Corporate/M&A: Venture Capital Lawyer; identified by *The Best Lawyers in America*® 2007-2014 as a leading lawyer for Mergers & Acquisitions, Private Funds Law, Venture Capital Law and Leveraged Buyouts & Private Equity Law; and named as a Southern California *SuperLawyer* for 2006-2015.

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Howard S. Hogan is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher and is Co-Chair of the Fashion, Retail and Consumer Products group. Over the course of his career, Mr. Hogan has handled numerous complex cases in a variety of federal and state courts in several different substantive areas including general commercial, securities and employment matters, and internal investigations.

Mr. Hogan's practice focuses on intellectual property litigation and counseling, including trademark, copyright, patent, false advertising, right of publicity, licensing, and trade secret matters. Mr. Hogan has represented various corporations and individuals in a broad range of industries, including financial services, sports, fashion, cosmetics, entertainment, transportation, pharmaceuticals, and online services. A significant portion of Mr. Hogan's practice involves computer, Internet, and new media-related issues. He has represented and counseled a wide variety of companies on these issues, whether they are Internet-focused companies or traditional brick-and-mortar companies. Many of Mr. Hogan's matters have tested the application of traditional legal principles to the Internet and new media, such as in connection with issues of Internet jurisdiction, online contracting, and the application of trademark and copyright law to search engines, social media, and online sales. Mr. Hogan also regularly counsels clients in connection with the application of privacy law to online commercial activities and data breaches, and has assisted clients with several substantial trade secrets and information security matters.


Mr. Hogan is a frequent lecturer and writer on intellectual property and technology-related issues. For example, Mr. Hogan is the co-author, with Gibson Dunn partner Lois Herzeca, of *Fashion Law and Business: Brands and Retailers*, a treatise published by the Practising Law Institute (2013). Mr. Hogan is also co-author of the trademark and domain name chapters of the treatise, *Intellectual Property Law in Cyberspace*, published in 2011 by Bloomberg BNA in conjunction with the American Intellectual Property Law Association, and updated annually. Mr. Hogan has also been a speaker at meetings of the International Trademark Association on "Competitors' Use of Keyword Advertising and Search Engine Optimization"; the South by Southwest (SXSW) Interactive Conference in Austin, Texas on "Data Customization and Privacy – Can They Coexist,?" and the American Bar Association Section of Intellectual Property Law on "Recent Developments in Survey Evidence." Mr. Hogan has also provided commentary on intellectual property issues for CBS News, Bloomberg TV, and National Public Radio,

and he has been quoted in publications such as *The Wall Street Journal*, *Law360*, *Electronic Commerce & Law Report*, *The Recorder*, and *Managing Intellectual Property*.

Mr. Hogan devotes significant time to assisting not-for-profit organizations with different issues. In 2008, the Meals on Wheels Association of America honored Mr. Hogan with its 'Friend of the Year Award' for his assistance to MOWAA's efforts to end senior hunger, and Mr. Hogan has served on the Boards of Directors for the Meals on Wheels Association of America Foundation, the Meals on Wheels Research Foundation, and the National Foundation to End Senior Hunger. Mr. Hogan is also an active member of the Northern Virginia Technology Council, where he has spoken on legal issues and serves as a member of the steering committee for NVTC's General Counsel Committee.

Representative Matters

- Represent **Gucci America, Inc., Balenciaga America, Inc., Tiffany & Co.**, and other luxury brands in a series of trademark infringement actions against operators of websites that sell counterfeit goods, resulting in awards of millions of dollars in damages and broad injunctive relief. In 2009, Mr. Hogan and the Gibson Dunn team brought claims in the Southern District of New York against Woodforest National Bank and others for their role in processing credit card orders for counterfeits. In June 2010, in a closely watched decision, the court denied the defendants' motion to dismiss, finding that Gucci's complaint sufficiently stated a contributory trademark liability claim. More recently, in *Gucci America, Inc. v. Li*, a different court granted Gibson Dunn's motion to compel the Bank of China to produce counterfeiters' bank records, despite claims that the documents were protected under Chinese law, and denied the Bank's cross-motion to relieve its obligation to freeze the counterfeiters' accounts.
- Represented **Capital One Financial Corporation** in a lawsuit against John Kanas and John Bohlsen, the most senior officers of BankUnited, Inc., for violation of non-competition agreements that they had entered into in connection with the sale of North Fork Bank to Capital One in 2006 for \$13.2 billion. The case settled on favorable terms after Capital One prevailed in a number of discovery disputes, and after United States District Judge Liam O'Grady denied Defendants' motion for summary judgment, concluding that the non-competition agreement at issue was enforceable as a matter of Virginia law. Under the terms of the settlement agreement, Capital One received \$20 million in cash, and Defendants agreed to additional non-monetary relief.
- Represented **American Airlines, Inc.** in a cutting-edge and hard-fought trademark dispute with Google seeking broad injunctive relief and extensive damages concerning the use of American's trademarks in Google's search advertising programs. After intense discovery battles, Gibson Dunn successfully argued to the Court that Google should be sanctioned by requiring Google to provide direct access to its extensive electronic databases so that American could show substantial trademark violations and extensive damages. The case was settled pursuant to a confidential settlement agreement. Gibson Dunn also represented American Airlines in a similar lawsuit against Yahoo alleging identical Lanham Act and common law claims, and Yahoo also settled on the eve of an evidentiary hearing concerning Yahoo's alleged discovery misconduct.
- Served as lead counsel for the **University of Southern California** in a case filed in the U.S. District Court for the District of Columbia by inventor Dennis Solomon asserting trademark, trade secrets,



Professional Profiles

and other claims. In 2010, the Court of Appeals for the D.C. Circuit summarily affirmed the order of dismissal obtained in the District Court below.

- Represented clients such as **CIGNA Corp.**, **Viacom**, and **Serono International, S.A.** in defending patent claims pending in jurisdictions throughout the country (including the Central District of California and the Eastern District of Texas) in connection with a variety of pharmaceutical, communications, and electronic gaming technologies.

From 1999-2000 Mr. Hogan was Law Clerk to the Honorable Naomi Reice Buchwald, United States District Judge for the Southern District of New York. In 1994, Mr. Hogan helped to initiate the AmeriCorps*National Civilian Community Corps, where he served as a Team Leader until 1996 and received the organization's Outstanding Leadership Award in 1995. Prior to joining Gibson Dunn, Mr. Hogan was an associate with the New York office of Debevoise & Plimpton, LLP.

Mr. Hogan received his B.S.F.S., *magna cum laude*, from Georgetown University School of Foreign Service in 1994 in International Relations, Law, and Organization, Phi Beta Kappa with a European Studies Certificate. In 1999 he received his J.D., *cum laude*, from New York University School of Law, where he was Editor-in-Chief of *The Commentator* and Research and Writing Editor for the Moot Court Board. Mr. Hogan is also an alumnus of Lady Margaret Hall, Oxford University, where he spent the 1992-93 academic term as a visiting student.

Mr. Hogan is a member of the bars of New York, Connecticut, and the District of Columbia, and has been admitted to appear before the U.S. Courts of Appeals for the Second Circuit, the Fourth Circuit, the Ninth Circuit, the D.C. Circuit and the Federal Circuit and the United States District Courts for the Northern, Southern, and Eastern Districts of New York, the District of Columbia, the District of Maryland, and the Eastern District of Texas.

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Gillian McPhee is of counsel in Gibson, Dunn & Crutcher’s Washington, D.C. office, where she practices in the firm’s Securities Regulation and Corporate Governance Practice Group. Ms. McPhee focuses her practice on governance matters and securities regulatory issues. Ms. McPhee has advised corporate clients with respect to a wide array of matters, including board and committee practices and operations, director independence, duties and liabilities of directors and officers, indemnification and D&O insurance, and securities law disclosure issues. Ms. McPhee also has considerable experience advising nonprofit organizations on governance matters.

Ms. McPhee is the author of the chapter “Liability of Officers and Directors; Statutory Limitations, Indemnification and D&O Insurance,” in the treatise *Corporate Governance: Law and Practice*. She also has authored or co-authored a variety of articles and other publications on corporate governance and securities law issues. Representative publications include:

- “Current Issues in Director and Officer Indemnification and Insurance,” in *Insights—The Corporate & Securities Law Advisor*, July 2013;
- “Audit Committee Disclosure and Related Requirements,” a chapter in the treatise *A Practical Guide to SEC Proxy and Compensation Rules*; and
- *Management’s Discussion and Analysis*, BNA Accounting Policy & Practice Portfolio Series.

Ms. McPhee received her J.D., with Honors, from the University of Texas School of Law in 1997. She received her Bachelor of Arts *magna cum laude* from Yale University in 1993.

Ms. McPhee is admitted to practice in the State of Maryland and the District of Columbia.

Benjamin S. Ross



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Ben Ross is an associate in the Los Angeles office of Gibson, Dunn & Crutcher. He advises clients in mergers and acquisitions, equity investments, joint ventures and general commercial agreements. Ben has published on a variety of topics, including joint ventures, fiduciary duties, and limited liability companies. He is admitted to practice in both New York and California. Prior to joining Gibson Dunn, Ben clerked for the Chancellor of the Delaware Court of Chancery, working on opinions relating to takeover control premiums, poison pills, proxy contests and other internal governance matters. Ben is currently a member of the Corporations Committee of the California State Bar. He has been annually named a Southern California's "Rising Star" by Southern California Super Lawyers since 2013.

Representative Matters

- **Westwood Technology Transfer**, in its formation, negotiation of a technology management agreement with the Regents of the University of California, and ongoing governance matters.
- **The Chernin Group** in: the formation of a joint venture with AT&T to acquire and launch over-the-top video services; and in the separate formation of a partnership with Providence Equity Partners, Qatar Holding, and other investors
- **THQ**, a video game publisher, in the chapter 11 sale of its assets to various U.S. and international buyers, including Take-Two Interactive, Sega Corporation, Koch Media and Ubisoft
- **Cadence Design Systems** in its acquisition of Tensilica, a provider of dataplane processors
- **Nordstrom, Inc.** in its acquisition of HauteLook, an online private retailer
- **Riot Games**, a developer and publisher of online video games, in its acquisition by Tencent
- **Acumen Fund** in its investments in: **Esoko**, a Ghanaian-built technology platform that connects African farmers to markets; **Husk Power Systems**, a provider of renewable energy in India; and **Sanergy**, a provider of waste management services in East Africa

Ben received his J.D. from New York University School of Law in 2004, where he received the Vanderbilt Medal and the President's Service Award for achievements and public service. He received his Bachelor of Arts from Princeton University, graduating *magna cum laude*. Ben serves on the board of the Zimmer Children's Museum and the advisory board of the Friends of the Semel Institute.

Clarence Shen



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Clarence Shen is an associate in the Los Angeles office of Gibson, Dunn & Crutcher. He currently practices in the firm's Corporate Department.

Mr. Shen earned his J.D. in 2013 from the UCLA School of Law, where he was elected to the Order of the Coif and served as Chief Articles Editor on the *UCLA Journal of Law and Technology*. While in law school, he served as a judicial extern to the Honorable R. Gary Klausner, United States District Court, Central District of California. Mr. Shen received a Bachelor of Science degree in Electrical Engineering and Computer Science from the University of California, Berkeley in 2005. Prior to law school, he worked as a software engineer for several large Internet companies building scalable distributed systems.

Mr. Shen is a member of the State Bar of California and is admitted to practice law before the United States District Court for the Central District of California.



Fee Structures

We provide below the standard hourly rates for the team that we have proposed. In addition to a standard hourly approach, please know that we are flexible and creative when it comes to considering alternative fee structures. Below are two options that we have found to work well under certain circumstances. We are also open to considering other alternatives that you might suggest.

First, after we have had an opportunity to engage in enough preliminary work to allow us to fully understand our role and the overall scope of the project, we could break the matter into phases and provide a fixed fee estimate for each phase. These estimates would be calculated based on our best estimate of the number of attorney hours that would be required and based on other assumptions about the work that would be developed in consultation with CWG. We could then agree that the fees for a particular phase would not exceed the fixed fee assuming the scope of work on that particular phase is consistent with our assumptions.

A second option is a blended hourly rate. Partner rates, as you know, are higher than associate rates per hour. In this case we would propose a blended hourly rate that would, by definition, represent a discount on partner time, but obviously would include a premium on associate time.

Standard Hourly Rates

- John Olson – \$1460
- Bradford Weirick – \$1065
- Howard Hogan – \$945
- Gillian McPhee – \$820
- Benjamin Ross – \$770
- Clarence Shen – \$505



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