



## KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS KERNOCHAN CENTER NEWS

COLUMBIA UNIVERSITY SCHOOL OF LAW

FALL 2005

### Columbia Welcomes Clarisa Long, New Shaye Professor of IP Law

The Kernochan Center joins Columbia Law School in welcoming and congratulating Professor Clarisa Long, the Max Mendel Shaye Professor of Intellectual Property Law. Long, a Visiting Professor at CLS last spring, joined the faculty this fall. She is the first holder of the Chair, which was generously endowed by Robert Shaye ('64), Chairman of New Line Cinema, in honor of his father. The Chair was established to ensure that Columbia remains the premier law school for the study of intellectual property.

Long's interests and research include Copyright, Trademark, and Patent. She is currently examining the boundaries between these areas and between intellectual property and other areas of law, particularly contract. Her current projects include a paper discussing the results of her empirical study of the judicial enforcement rates of trademark dilution claims. In a new study, she will examine licensing practices in industries that rely heavily on copyright protection.

Long first became interested in intellectual property law and in teaching when she was living in New Zealand about fifteen years ago, doing recombinant DNA research. She became involved with a start-up company that was patenting several products as part of its efforts to commercialize its basic research. "I became fascinated with the interface between the scientific and legal/regulatory communities, particularly the differences in the way that each community thought about intellectual property. So I decided to go to law school."

After graduating from law school, clerking for Judge Alvin A. Schall of the United States Court of Appeals for the Federal Circuit, and working at Wiley, Rein & Fielding, Long was granted a fellowship position at Harvard University. "My fellowship provided me with the opportunity to write and publish in an academic environment, and to conduct interdisciplinary



Margo Crespin

*Clarisa Long, Max Mendel Shaye Professor of Intellectual Property Law.*

nary study of intellectual property." While at Harvard, Long taught a class on legal and regulatory issues in biotechnology. "This required me to think about how people process information, how they think about intellectual property, and how they frame their perceptions of it," she explained. From there, Long joined the faculty at the University of Virginia School of Law. She is currently teaching courses on Copyright and Contracts and will teach a seminar on theories of intellectual property in the spring.

### New Seminar Offered on Authors, Artists and Performers

This fall, June Besek, the Executive Director of the Kernochan Center, is teaching a new seminar on "Authors, Artists, and Performers." "At Columbia Law School, we have always had a particular interest in individual authors," she explained. "I felt we really needed a seminar that explored the interests and concerns of actual creators. Our classes tend to be either general survey courses such as Copyright and Trademarks, or industry-specific, like our seminars in Law and the Music Industry or Law and the Theater. We didn't have any that focused on creative individuals, across industries."

Besek observed that in the national policy debates about copyright, the most vocal participants were often big copyright owners, user groups and Internet service providers. "Sometimes individual authors don't seem to have a voice in these debates," she explained. "Yet their concerns don't always parallel those of the big copyright owners." She concluded that a seminar that focused more attention on individual

creators would be a valuable addition to the curriculum.

Besek was also inspired by the talented and creative students she has encountered at Columbia, including two former research assistants who had prior careers in the arts, one as a dancer and one as a musician. "Columbia has many students who worked in entertainment or the arts before coming to law school, and they have a unique perspective to offer in the classroom," she explained.

The seminar addresses the role of individual authors, artists and performers in the creative process. It explores ways in which their treatment under intellectual property and related laws encourages (and sometimes hampers) the development of new and creative literary and artistic works. Topics covered will include: moral rights (including authorship credit), performers' rights, issues of disparate bargaining power, the role of trade groups and other representatives, de-

*(Continued on page 4)*

## Spotlight on Art Law Summer Interns



From left to right: Pamela Kellet ('07), Brian Puchalsky ('07), Chan Casey ('07), and Scott Wilson ('07). Not pictured: Elyssa Folk ('07), Jessica Kiser ('07), and Noelle Kvasnosky ('07).

Seven Columbia Law School students participated in the arts law summer internship program sponsored by the Kernochan Center, with generous support from the Joseph Solomon Internship Fund, the John F. Wharton Internship Fund, and the Robert Blumofe estate. The students spent the summer working in the legal departments of arts and media-related organizations.

"Working at Lincoln Center was a fantastic experience," raved Elyssa Folk ('07). "I had the chance to hone my legal skills in the largest performing arts center in the world and the internship fortified my desire to pursue a career that combines law and the arts."

Jessica Kiser ('07) described what she enjoyed most about her summer internship as "the opportunity to see the breadth of legal issues handled by Thirteen/WNET-New York's in-house legal team. I worked on a wide variety of topics, from corporate law, and museum licensing procedures to copyright and defamation law."

Pamela Kellet ('07) reported, "I am really happy that I had the opportunity to intern at KCET this summer and have learned a lot." Kellet noted that her work included "acquiring rights from publishers so that KCET might re-release a previously aired television show on home video and DVD."

Brian Puchalsky ('07) was enthusiastic about his internship at the New York Public Library. "The best thing about working for the New York Public Library was the number of different topics I was assigned – because a new issue seemed to come up each day, I was always reading and writing about a new area of law."

As an intern at the International Foundation for Art Research (IFAR), Scott Wilson ('07) contributed to IFAR's "art law" website project "that should prove a useful reference for lawyers and lay people," Wilson explained.

Chan Casey's work at NPR involved the cutting edge issue of orphan works. Casey ('07) described orphan works as "those for whom no copyright owner can be determined or located after a reasonable search." Currently considering the issues posed by orphan works, the Copyright Office held roundtable discussions of the topic. "NPR wanted to testify at the roundtables" said Casey. During his internship, he wrote the proposal to testify, helped prepare testimony and ultimately "attended the roundtables."

(Continued on page 4)

## Recent Projects and Publications

### Professor Jane Ginsburg

\* *Intellectual Property Stories*, a compendium of articles unveiling the historical, human, and jurisprudential Stories behind 12 leading IP cases, edited by Rochelle Dreyfuss (CLS '81) and Professor Ginsburg, will be published by Foundation Press in November 2005. Columbia alumnae/i Prof. Diane Zimmerman (JD 1976); Prof. Jessica Litman (JD 1983); Prof. Rob Merges (JSD 1994); Prof. Graeme Austin (JSD 2001); and Prof. Graeme Dinwoodie (JSD 2000) contributed chapters. The book cover is designed by Adine Kernberg Varah (JD 1995).

\* "The Author's name as a Trademark -- A Perverse Perspective on the Moral Right of Paternity?" will be published in *The Cardozo Arts and Entertainment Law Review*.

### June Besek

\* Recently completed a study on digital preservation and dissemination of pre-1972 sound recordings by libraries and archives, for the Council on Library and Information Resources (CLIR) and the Library of Congress.

\* Member of the Section 108 Study Group, convened by the Library of Congress and charged with making legislative recommendations to update the Copyright Act to reflect the appro-

priate balance between the rights of creators and copyright owners and the needs of libraries and archives in the digital world. (For more information on the Section 108 Study Group, see <http://www.loc.gov/section108/>).

\* Currently serving as a consultant on rights issues to the "Preservation Partners" participating in the Library of Congress's National Digital Information Infrastructure Preservation Program (NDIIPP) initiative. (For more information, see <http://www.digitalpreservation.gov/index.php?nav=4>).

### Margo Crespin

\* Her article, "A Second Bite of the Apple: A Guide to Terminating Transfers under Section 203 of the Copyright Act" will be published by the Authors Guild this fall.

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COLUMBIA LAW SCHOOL  
435 WEST 116TH STREET, BOX A-17  
NEW YORK, NEW YORK 10027  
PHONE: (212) 854-7424  
FAX: (212) 854-9111

## Paul Goldstein Delivers Manges Lecture

On April 4, 2005, Paul Goldstein ('67), the Ira S. Lillick Professor of Law at Stanford Law School, delivered the eighteenth Horace S. Manges Lecture, "Copyright's Commons." Goldstein, a pre-eminent scholar of copyright in the United States, is the author of the treatise *Goldstein on Copyright* (3d ed. 2005), and of *Copyright's Highway* (revised ed. 2003). His first novel, *Errors and Omissions*, will be published in 2006.

Professor Goldstein opened his lecture by asking the audience to imagine Pablo Picasso as a young man, sketching Velasquez paintings on view at the Prado Museum, and Igor Stravinsky borrowing from Bach. "The point of these examples is that contemporary copyright law in the United States and around the world has created a broad, deep and many-layered commons, a wealth of content, free for the taking, that is far more than merely sufficient to sustain a rich and varied culture in all its aspects," he explained. "Against the wealth of this commons," Goldstein added, "the current complaint from the academy that copyright reforms of the past quarter century have improperly foreshortened the public domain appears to be vitally flawed."

Quoting Mark Twain, who reportedly said of Wagner's music, "It's not as bad as it sounds," Goldstein said "I think the same can be said of copyright." He voiced his concern regarding the public perception that "copyright has become a juggernaut" and advocated the importance of addressing this public perception. In order to do so, Goldstein advised that, "The starting point in a campaign of public education . . . is to reject as legally and factually unsound the assertion by some of copyright's more extreme critics that the law stifles creativity, free speech and the flourishing of culture." Goldstein attacked this type of complaint as overlooking "copyright's past, its evolution, its present condition, and above all the practical realities of the law's workings in the world."

Goldstein pointed out that copyright law extends protection only to creative expression, but not to ideas which are "free for borrowing by all." He set forth and discussed three points "essential to an understanding of the place of ideas in copyright's commons." First, Goldstein noted that "the rule that ideas are free from copyright's constraint has no express footing in the U.S. Constitution but it has been shaped by Constitutional expectations," notably the First Amendment and free speech. Next, Goldstein emphasized the vast scope of the ideas "left free by copyright." He explained that "these unprotectable ideas are not just ideas in the literal sense of that word nor are they simply facts. . . rather, 'idea' is a metaphor for those creative building blocks that Congress and the courts have determined are too important to the progress of culture to leave exclusively in private hands." Goldstein explained that in the area of literary works, the themes, plot and stock characters are not protected. Goldstein's third point, that "copyright is not patent," is one he feels has been fundamentally misunderstood by copyright's critics.



Lynn Saville

Paul Goldstein, CLS '67, Lillick Professor of Law, Stanford University.

Goldstein countered critics of copyright's reach, mentioning a number of direct trade-offs in copyright legislation between private rights and public prerogative. While he acknowledged that the Copyright Term Extension Act extended the term of copyright, he noted that four years later the Copyright Act released works into the public domain that had been subject to perpetual common law – "a vast goldmine that has now been open for scholars and many others."

Discussing fair use, Goldstein alluded to the transformative use cases to illustrate that, "Never in its history has the doctrine cut a broader swath." He advocated, "Anyone who believes in copyright's balance should press the affirmative case for copyright." Citing the over 1000 literary magazines published today, Goldstein bolstered his point that never before in history has there been a wider selection of publishers.

Goldstein argued that, "The correct cause for advocacy is copyright itself . . . a system that takes as its balance wheel the need at once to promise authors protection for the product of their labors and to ensure them the freedom to borrow unprotected elements from the works of others." Goldstein concluded, "Copyright is not, to be sure, responsible for all of the cultural wealth we see about us, but it is surely responsible for some. And if copyright imposes so few constraints on users in return, that, in my view, is enough to make the case for copyright and author's right as a powerful and empowering force in the service of creativity, culture and ideas in the present century." Goldstein's lecture will be published in Volume 29, Issue 1 of the *Columbia Journal of Law & the Arts*.

KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS  
COLUMBIA UNIVERSITY SCHOOL OF LAW  
435 WEST 116TH STREET, BOX A-17  
NEW YORK, NEW YORK 10027

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## Spotlight on Art Law Summer Interns

*(Continued from page 2)*

Noelle Kvasnosky's internship at the City Attorney's office of San Francisco "was an amazing opportunity to work closely with a very knowledgeable attorney on a wide-variety of legal issues which affect museums, including trusts and estates, employment law, constitutional law and intellectual property." Kvasnosky ('07) worked closely with Adine Varrah, a 1995 Columbia Law School graduate and the Deputy City Attorney who counsels San Francisco's arts organizations.

Every year, the Kernochan Center sponsors summer internships placing first and second year students in the legal departments of arts and media-related organizations. Available internships vary from year to year with the needs and circumstances of the participating organizations. In past summers, students interned with legal departments of the Metropolitan Museum of Art, the Dramatists Guild, the Audubon Society, and the Museum of Modern Art, in addition to the organizations just described. Students selected to intern will receive a stipend of \$6000.00 for a ten week internship.

First and second year J.D. students interested in applying for arts and media-related summer internships should submit a resume and cover letter, addressed to Margo Crespin, Assistant Director of the Kernochan Center for Law, Media and the Arts, Box A-17, and sign up by November 1st for an informational interview with her, by Tuesday, November 1st. Sign-up sheets will be posted on her office door, Room 737,

in October. A brown bag lunch will be held on Thursday, October 20th, from 12:30-1:30 in Room 502 of Jerome Greene Hall, at which this summer's interns will discuss their experiences and answer questions.

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## New Seminar Offered on Authors, Artists and Performers

*(Continued from page 1)*

ivative works, appropriation art, fair use, the role of the public domain in the creative process, and the role of the Internet and new technologies. Throughout the semester, students will discuss whether the law has achieved the proper balance between protecting the work of authors, artists and performers, and making that work available to new creative authorship by others.

In one of the seminar exercises, Besek plans to assign each student the role of a particular kind of author, artist or performer – for example, a novelist, a composer, a singer or a software developer. The students will look at the type of contracts that author or performer might sign. "I want the students to understand how different authors, artists and performer get paid, and the conditions under which they work," Besek explained. "The exercise will provide insight into why creators may have very different views of technologies such as peer to peer file-sharing."