



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

COLUMBIA UNIVERSITY SCHOOL OF LAW

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June Besek Speaks at WIPO Digital Preservation Workshop

June Besek, the Kernochan Center's Executive Director, spoke at a workshop on digital preservation and copyright at the World Intellectual Property Organization (WIPO) in Geneva on July 15, 2008.

The workshop addressed the critical need for digital preservation and the ways in which copyright issues might be addressed. These issues arise because digital works, unlike analog works, are often short-lived. Works of authorship – books, letters, photographs, drawings, music – are “born digital,” but unfortunately many works disappear every day because they are removed, replaced, or superseded. Systematic efforts to preserve digital materials are lacking, in part because of copyright laws.

Many countries have copyright exceptions for libraries, archives and other preservation institutions. But those exceptions were largely created in the analog era, and often have limitations that are unworkable in the digital environment. For example, some national laws allow libraries and archives to make up to three copies of a work for preservation and replacement, but three copies are insufficient to ensure digital preservation. Also, in many cases copyright exceptions allow preservation institutions to copy and preserve only those works already in their collections. But if preservation institutions cannot acquire and preserve websites, blogs and other forms of user-generated content that reflect current culture, future generations will have no opportunity to study and enjoy them.

These issues and many others were highlighted in a study Besek co-authored entitled *International Study on the Impact of Copyright Law on Digital Preservation*. This 2008 report was made available to the WIPO workshop participants to provide a backdrop for their discussions. The study consists of individual reports for each of four countries, describing existing digital preservation activities in the public and private sectors, copyright and other laws that pose potential obstacles for preservation, and recommendations for change. Besek, along with William LeFurgy and Christopher Weston of the Library of Congress, and Mary Rasenberger, formerly of the Library's NDIIPP program and now a legal consultant, developed the U.S. portion of the report.

The WIPO Digital Preservation Workshop brought together librarians, digital preservationists and copyright experts from around the world. The morning presentations, by organizations that participated in the *International Study*, provided perspectives from Australia, the Netherlands, the United Kingdom and the United States. Besek summarized the situation in the United States. Panel discussions in the afternoon focused on preservation activities in three areas: e-journals, internet, and newspapers.

Participants in the WIPO workshop discussed a number of different preservation projects around the world, and the ways in which those projects address copyright concerns. Some projects simply focus on public domain materials to avoid

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Recent Grads Tell Students How to Succeed in a Tough Field

By Ben Frumin

Law School alumni who have found success in the tough-to-break-into fields of intellectual property and entertainment law offered advice, strategy and reassurance to approximately 50 law students at the annual Recent Alumni in IP and Entertainment Law panel. Organized by the Kernochan Center and the Office of Career Services, the panel was held on September 24 this year in an effort to help second-year students as they interviewed for summer jobs.

“If you want to practice in what I still think is a glamour field, you have to stand out,” said Camille Calman '06, an associate at Debevoise & Plimpton LLP. “You have to make people understand this is something you're really interested in and it's not just that you want to go to movie premieres.”

All four panelists echoed Calman and emphasized the importance of exhibiting real passion and knowledge regarding their chosen field.

One way to do that, they said, is to load up on relevant courses while at the Law School. “I took copyright. I took



Panelists: Isaac Dunham '04, Camille Calman '06, Ben McLean '03, and Chris Poindexter '03.

David Wentworth

trademark. I took almost every IP seminar there was,” Calman said. “It helps when that stuff is on your resume.”

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University Librarian Addresses Copyright Concerns in the Digital Era, Findings of Study Group, in 21st Annual Manges Lecture

By Carol Demartino '10

On March 25, 2008, James Neal, the Vice President for Information Services and University Librarian at Columbia University, delivered the 21st annual Horace S. Manges Lecture. In his talk entitled "A Lay Perspective on the Copyright Wars: A Report from the Trenches of the Section 108 Study Group," Neal spoke about his experiences as a member of the Section 108 Study Group, of which the Kernochan Center's Executive Director June Besek was also a member. The Study Group was formed by the Library of Congress and the U.S. Copyright Office. Its report on how the exceptions and limitations for libraries and archives in Section 108 of the Copyright Act should be altered in light of new digital technologies was published the same week as Neal's lecture.

An active member of the university library community, Neal spoke with the perspectives of libraries, archives and universities in mind. He used the metaphor of war to describe the current debates on the development of copyright in the national and international arenas. He opened his lecture



June Besek, James Neal, and Jane Ginsburg at the Manges Lecture.

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Calman, who served as executive managing editor of COLUMBIA LAW REVIEW while at the Law School, strongly suggested writing a note and trying to get it published. She said she still gets work on cyber law issues based on notes she wrote on phishing and spyware while in law school.

The panelists also underlined the importance of networking. Chris Poindexter '03 said he landed his job as an associate specializing in advertising law at Davis & Gilbert LLP after meeting a recruiter at a cocktail party. Other panelists suggested that it's never too early to start making industry connections.

"Those connections are important, easy and fun, and it's something you can do right now in law school," said Isaac Dunham '04, an associate specializing in entertainment law at Schreck Rose Dapello Adams & Hurwitz LLP. That might mean participating in student organizations or landing a relevant internship. It's also helpful to keep up-to-date on issues in the theater, film and television industries, the panelists said.

"If you've studied up, you can talk shop, and that makes a difference," Dunham said. Ben McLean '03, senior counsel for Rainbow Media, cautioned students to be realistic in their expectations, because it can be difficult to immediately land a job working on movie stars' contracts. Instead, it's wise, McLean continued, to seek out a more general job at a big law firm where you can sidle your way into working on client transactions that are related to media and entertainment, if only tangentially.

Calman said she sometimes approaches partners at her firm and tells them she's interested in working on one of their



Isaac Dunham '04 offers advice to students at the panel's reception.

IP cases. "My firm has someone who's in charge of assigning people to cases, but there's also always a back channel," she said. "And if you say to a partner, 'This case you're working on sounds fascinating,' they're going to find a way to put you on that case if they can, or they're going to put you on the next case."

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Summer Internship Program Continues To Provide First Year Students In-house Opportunities

Once again, the Kernochan Center's summer internship program was a success. Three students who had just completed their first year studies participated in the program.

Ariel Schneier '10 interned at the San Francisco City Attorney's Office under the supervision of alumna Adine Kernberg Varah '95. Ariel spent the summer drafting contracts and working on research projects – including some particularly interesting First Amendment work. She assisted in trademark prosecutions and learned about the museum's relationships with its employees, trustees and ancillary services. Ariel also had numerous extra-curricular opportunities, including meeting with the attorney who had recently won a landmark decision legalizing gay marriages in California. Ariel called Adine "a wonderful mentor" who went out of her way to include Ariel in interesting meetings and projects.

Erin Thompson '10 worked in the General Counsel's office at the Philadelphia Museum of Art, a placement offered for the first time this year. Erin completed her Ph.D. in Art History at Columbia in spring 2008, and is interested in a career in art law. Working with Larry Berger, the museum's

General Counsel, was "fantastic," she said. "He carefully explained my assignments, giving me all the pertinent background information and documents from his files," she explained. As the only legal intern, Erin was assigned work with a high level of responsibility. She researched complex trusts and estates issues, wrote memos on a newly-passed local law's impact on the museum, reviewed construction contracts, and assisted with the museum's re-accreditation process.

When Anna Kadyshovich applied to the internship program, she knew exactly where she wanted to spend her summer – the offices of National Public Radio in Washington, D.C. She was most appreciative of the substantive assignments she received from the seven full-time attorneys who make up the General Counsel's office. She drafted cease-and-desist letters, researched broadcast rules for the Olympics, and wrote several significant memoranda (including one that was disseminated to the entire NPR staff). Marian Hale, Esq., who had been Associate General Counsel at NPR for some time, left just before Anna's arrival. Greg Lewis, Esq. has replaced Ms. Hale and supervised Anna's internship.

University Librarian Addresses Copyright Concerns in the Digital Era

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by referring to a copyright "battle" with "high stakes for legislative and legal treatment of copyright in an increasingly digital and network arena." Neal sought in his lecture to provide a framework for understanding the heightened attention to copyright in libraries and universities, describe developments in copyright that impinge on those interests, and speculate on the future of copyright policy, especially as it relates to libraries and universities.

Throughout his lecture, Neal emphasized the transitional state that libraries and universities find themselves in today as an increased focus on customization has forced them to reevaluate their fundamental natures and societal roles. According to Neal, libraries and universities are expected to respond to the individual needs and preferences of their users in an environment where users are increasingly concerned not only with quality of content, but with the functionality of the content. At the same time, Neal described the role of the library as expanding to include that of educator and policy advocate.

Neal articulated various concerns over recent copyright developments. For example, he said he is wary over the globalization of copyright and the resulting effort to harmonize laws that undermine our national copyright tradition. He expressed concern about litigation rather than debate defining copyright, and about new legislation seeking to update copyright that he sees as advancing the interests of various groups.

Neal stated that the library community must develop policies for copyright management to allow broad and easy

distribution of materials for the benefit of scholars and other users and encourage a competitive and supportive market for scholarly work. He also supported the innovative and transformative uses of technology without undermining the balance of copyright, and the enabling of systematic archiving of information. In order to achieve these goals, Neal advocated monitoring the impact of anti-circumvention legislation, expanding the scope of fair use in digital environments, and promoting the public's access to federally funded research projects.

Concerning the Section 108 Study Group, Neal noted that on some issues the report made recommendations for legislative action. For example, Neal emphasized that the Study Group strongly supported the eligibility of museums, along with libraries and archives, for the section 108 exceptions. He also discussed the Study Group's recommendations for preservation of at-risk works in their collections and for collection and preservation of publicly available internet content, such as websites. However, he observed that on other issues the report could not make any specific recommendations because of a lack of consensus among members of the group. He concluded his lecture by emphasizing that the hallmark of our copyright system is balance and trust, and that copyright legislation and regulatory action should ensure that innovation is not undermined.

The text of the Manges lecture will be printed in an upcoming issue of THE COLUMBIA JOURNAL OF LAW & THE ARTS.

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copyright problems. Other initiatives, such as the Internet Archive, take advantage of existing exceptions like fair use. Still others, such as Portico and Koninklijke Bibliotheek's e-Depot, rely on cooperative arrangements with rightholders. The existing preservation programs are very valuable: they not only save important cultural material, but also lay the groundwork for developing digital preservation "best practices." But they are incomplete solutions that address only a fraction of born digital works.

The final panel of the day was entitled "The Path Forward." Representatives of libraries and right holders provided summaries and perspectives on the day's proceedings. Besek summarized the joint recommendations of the *International Study*. They included recommendations for legal reform to allow preservation institutions such as libraries and archives to copy all categories of works in digital form proactively for preservation, and allowing preservation institutions to make the number of copies necessary for effective digital preservation. The study also recommended that national laws enable comprehensive preservation through some combination of legal authorization to preservation institutions to harvest publicly available internet content, incentives for contractual arrangements to support preservation, and legal deposit mechanisms.

Besek's work with the Library of Congress in connection with the *International Study* and the WIPO workshop grew out of her activities with the Section 108 Study Group. Besek was a member of the Study Group and its legal advisor.

*** SAVE THE DATE ***

The 4th Annual Kernochan Center
Symposium

January 23, 2009

*Copyright Intermediaries: Inviting or
Averting Infringement?*

Keynote Speech
by
Judge Alex Kozinski

*** SAVE THE DATE ***