

KERNOCHAN CENTER

FOR LAW, MEDIA AND THE ARTS

Fall 2012

HARVARD UNIVERSITY LIBRARY DIRECTOR GIVES 2012 MANGES TALK



Robert Darnton, The Carl H. Pforzheimer University Professor and Director of the Harvard University Library gave the 25th Annual Manges Lecture on April 2.

Robert Darnton, the Carl H. Pforzheimer University Professor and Director of the Harvard University Library, delivered the 25th Annual Horace S. Manges lecture on April 2. The title of his lecture was “Digitize, Democratize: Libraries and the Future of Books.”

Professor Darnton made the case for the Digital Public Library of America (DPLA) by contrasting two different tendencies throughout the history of books: democratization and commercialism. Reviewing the history of books from the 1700s, Prof. Darnton described the first libraries as dark rooms with walls and barriers to keep outsiders out. Libraries prior to the Age of Enlightenment were for the elite and closed off to the general population. Books were “purged rather than preserved” and stored texts were not made for use by scholars, he explained.

Although Prof. Darnton acknowledged that the idea of the DPLA is utopian, he feels that society is in need of a digital library that will be accessible to everyone. “We have the funds, the knowledge and the determination to do so,” he said.

He recognized the many obstacles that stand in the way of

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NEWEST KERNOCHAN CENTER FELLOW TO STUDY INTERNET LIABILITY

By Idara Udofia '13

The Kernochan Center welcomes Yafit Lev-Aretz, the Center’s newest Intellectual Property Fellow, who will join the Center in September. A native Israeli, Lev-Aretz received her LL.B and LL.M. from Bar-Ilan University in Israel.

After graduating, she clerked for the Israeli Supreme Court and worked on legislation as an intern at the Department of Counseling and Legislation of the Ministry of Justice.

Lev-Aretz received her LL.M. from Columbia in 2009 and then began working towards her S.J.D. at the University of Pennsylvania Law School, a degree she expects to receive this summer.

While at Columbia, Lev-Aretz plans on researching the relationship between online user-generated content and copyright law. She is interested in the constant change in Internet practices and the degree to which the law addresses these areas. Lev-Aretz has already



Yafit Lev-Aretz, LL.M. '09

done some work in this area, recently publishing an article on agreements between user-generated platforms and rightholders. She looks forward to exploring more of these issues as well as other intellectual property matters while in residence at Columbia.

Lev-Aretz said attending Kernochan Center events while a student at CLS deepened her interest in copyright law. She applied to be a Center Fellow because she wanted to return to Columbia to work with the professors she met here, and gain experience as she prepares to enter the legal academic market. She looks forward to exchanging ideas and contributing to the CLS community.

In her spare time, Lev-Aretz enjoys family time, friends, kickboxing, and Zumba. She has been married for seven years and is a mother of a two-year old daughter, who has a rich vocabulary, though it does not yet include the word copyright. This, Lev-Aretz says, will probably change.

ALUMNA PROFILE: ASHIMA DAYAL '96

By Idara Udofia '13

For Ashima Dayal '96, constant innovation, creativity, and the ability to shape the law make daily practice rewarding. Currently she is a partner at the New York law firm Davis & Gilbert LLP and a new member of the Kernochan Center's Board of Advisors. Dayal's practice focuses on entertainment, media and advertising law. She became interested in these subjects when she took an undergraduate art law course at Columbia College taught by fellow Board member and adjunct faculty member Fred Koenigsberg.

After receiving her undergraduate degree, Dayal worked in advertising and marketing but decided after a few years that she wanted to practice law. She chose to attend CLS because of its strong program in art-related subjects, and was first exposed to copyright in her Legal Methods class taught by Professor Ginsburg. Finding the material engrossing, she set out to fill her schedule with IP-related courses, seminars, externships, and symposiums. Dayal found her coursework intellectually stimulating and demanding and the faculty kind and accessible. Her externship at Volunteer Lawyers for the Arts developed her interest in helping creators with their legal matters.

After graduating, Dayal became a litigation associate at Debevoise & Plimpton LLP before joining Davis & Gilbert. She values the wide range of issues she encounters in her practice, which includes mediation, arbitration, client counseling, demand letters, and licensing. She has worked on a variety of matters involving creative content, including Super Bowl ads,

films, theatrical productions, and literature. Dayal enjoys the fast pace of her field and the fact that her clients' work is very much appreciated by the public.

When asked to identify the important issues in intellectual property today, Dayal responded that the lack of clarity and guidance on particular issues can be challenging yet also fascinating.

She is especially interested in the recent right of publicity cases and the intersection of commercial and non-commercial speech in television. Currently, Dayal is working on several matters that involve athletes' rights of publicity and the free speech rights of video game companies.

In terms of future developments in IP law, Dayal explained that there is room for more clarification of the fair use defense and anticipates the courts will provide guidance on some pivotal distinctions, such as between a satire and parody.



ONCOPYRIGHT 2012: ADVANCING THE CREATIVE ECONOMY

By Idara Udofia '13

On March 30, the Kernochan Center co-hosted the Copyright Clearance Center's all-day symposium "OnCopyright 2012" which focused on copyright's role in the creative economy. Author John Howkins was the first keynote speaker of the symposium. He began by stating that the way societies perceive creativity has changed along with the creative process and the business models that exploit creative works. Howkins emphasized that copyright and other laws that govern creative production are critical to its development and stressed the importance of freedom to create and market one's works.

Panel 1 - Art Panel: Remix and Reuse

The first panel discussed current issues regarding the sharing of creative materials online, exploring the relationship between and value of originals, copies, and curated works in the current creative economy. The diverse panel, which included creators and publishers, shared their experiences and observations about remixing in the Information Age and discussed the need for regulations to balance the interests of content owners and consumers.

Panel 2 - Law Panel: Copyright & Culture

The Kernochan Center's Executive Director, June Besek,

opened the second panel by framing the discussion of law and the creative economy as a balance between creators and users. Pointing out that legal and policy developments, or the lack thereof, may skew the development of the creative economy, Besek asked all the panelists to describe recent developments that may advance or facilitate the creative economy. Several speakers acknowledged the value of fair use and

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Robert Levine (right), keynote speaker and author of "Free Ride" with Kenneth Brooks (left) of Cengage Learning

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accomplishing this goal. The most notable obstacle the DPLA faces is its inability to include copyrighted works as part of its database. Even though the DPLA is a not-for-profit organization, it can still face infringement suits.

The DPLA would be able to use the roughly two million books that are currently in the public domain. In addition, Prof. Darnton thinks the DPLA should look to books no longer commercially available that could still be of interest to the public. These books' authors would welcome new readers for their works, offering them "new life." While there could still be constraints on these materials, authors could license their rights to the DPLA, allowing the DPLA to digitize the authors' books, curate them, preserve them, and make them available free of charge to the entire world.

Prof. Darnton concluded with a promise: "We will get it done. We will raise the funds; we will design the technology. We will organize the administration and we will work through the legal problems. Our concern with legal entanglements should not blind us to the utopian energy that has driven democratization from the time of the Founding Fathers. Given the opportunity, authors, publishers and readers, I think, will rally to the cause. Their commitment can fuel the other force that shaped the republic from the beginning – that pragmatic

'can do' spirit that actually gets things done."

Prof. Darnton ended his talk with the promise that the DPLA will be up and running within the year.



Jane Ginsburg, Faculty Director of the Kernochan Center
with Manges lecturer, Robert Darnton

ONCOPYRIGHT 2012: ADVANCING THE CREATIVE ECONOMY

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agreed that new regulators and policies are necessary to address the evolving creative economy.

Although Carol Mandel, New York University's Dean of the Division of Libraries, was optimistic about finding solutions, she warned that if legal developments are overreaching, constructive uses may be harmed by the "legal equivalent of weapons of mass destruction."

Tom Rubin, Counsel for Intellectual Property Strategy at Microsoft, maintained that the goal of legal and policy developments should be to establish a way for users to quickly license works. He explained, "if we can create a copyright system that can operate and facilitate transactions at the speed of light as other things do on the internet, we can create greater opportunities for creators in this new world."

Featured Speaker, Robert Levine, author of "Free Ride"

The afternoon began with the second keynote speaker, Robert Levine, a journalist and author. He spoke about the history of free riding and the public's tendency to use music for business-related purposes without paying for it. Levine explained that both creators and businesses strive to further their own interests. The goal of copyright law, Levine said, is to mediate the relationships between the various actors and to protect individuals' rights. Levine stressed that copyright law should give the creator a commercial monopoly right in the creator's work, and if the work is commercially exploited, the user should pay for the use.

Panel 3 – Technology Panel: Digitization & Disruption

The last panel addressed the effects of technology on the authors and creators, focusing particularly on the publishing industry. Introducing the panel was the Copyright Clearance Center's Michael Healy, who stated that "no facet of the industry has been left untouched" by technology, including book distribution, book pricing, librarians, book marketing, and more. In light of the changes to the traditional book industry, Healy invited the panelists to explore how technology has both disrupted and enhanced aspects of the book industry.

Though many services that publishers offer can be outsourced, all the panelists agreed that publishers are still valuable. Maja Thomas, Senior Vice President of Hachette Digital, noted that due to their resources, publishers can invest in a large and diverse portfolio of writers. Robert Levine agreed and further emphasized the value of risk aggregation and specialization. Several panelists predicted that the consolidation of book retailers will have negative effects. For instance, Jonathan Lyons, the founder of Lyons Literary, speculated that creators have fewer options when dominant book retailers have a large market share. Nevertheless, in the end, all the panelists acknowledged some of the positive effects of technology, such as increasing accessibility.

To view the Symposium, please visit the Copyright Clearance Center's website: <http://www.oncopyright2012.com>.

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MEDIA AND THE ARTS
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NEW YORK, NEW YORK 10027
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