

KERNOCHAN CENTER

FOR LAW, MEDIA AND THE ARTS

Summer 2016

POPULAR KERNOCHAN CENTER SPRING IP SPEAKER SERIES CONTINUED

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Kirkland & Ellis LLP's Dale Cendali

In the last issue of the Newsletter, we recapped the first lectures in the Kernochan Center Spring IP Series. The series continued on Tuesday, March 8 and we now present a summary of the rest of the programs.

The IP speaker series continued in March when former Kernochan Center fellow Brad Greenberg (now Counsel at the U.S. Copyright Office) and Professor Matthew Sag of Loyola University Chicago School of Law discussed the role of "copyright trolls" in IP litigation. Sag said that 58% of current copyright suits are brought by copyright holders threatening to sue individual users of infringing sites, user names they obtain by court-ordered subpoenas to the internet service providers who

host these sites. The difference between these actors and ordinary copyright holders seeking to protect their rights in their work is that these "trolls" seek to profit from the litigation rather than from the exploitation of the work at issue.

Generally the cases these serial plaintiffs bring settle before the parties even appear in court, which is part of the strategy. The plaintiffs' goal, Sag says, is for the defendants to pay some form of monetary compensation in order to avoid expensive litigation costs and, in many instances, to avoid being exposed as users of the infringing material, which is often pornographic.

Greenberg concurred that this type of copyright enforcement is litigation abuse. He called on the courts to use the powers available to them to curb these serial plaintiffs. Denying the trolls' subpoena requests and disallowing joinder so each suit would have to be separately filed are some ways courts could limit the ability of these plaintiffs to use this strategy.

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THE KERNOCHAN CENTER AND CLS AWARD ACADEMIC IP PRIZES



Neal Burstyn '16

Six members of the class of 2016 were recognized for their superior work in intellectual property at Columbia Law School's graduation ceremony, held on May 18, 2016.

The Andrew D. Fried Memorial Prize is awarded for the best student essay(s) published this year in the *Columbia Journal of Law and the Arts* on a subject

in the field of intellectual property and related law. This year's recipients were Neal Burstyn for *Creative Sparks: Works of Nature, Selection, and the Human Author* and Zoe Carpou, who authored *Robots, Pirates, and the Rise of the Automated Takedown Regime: Using the DMCA to Fight Piracy and Protect End Users*.

This fall, Burstyn is getting married and will then begin work at the New York office of Quinn Emanuel Urquhart & Sullivan, LLP. He sees himself as a "steward of the law" and hopes to guide the continued development of technology law. Burstyn notes that Professors Tim Wu, Jane Ginsburg, June Besek and Matthew Waxman were his mentors while in Law School. While he is unsure of his long-term career path, he is grateful to them and to his classmates for their intellect and passion about this area of the law.

With passions ranging from Snoop Dogg to ramen noodles, Carpou attrib-



Zoe Carpou '16

utes her courage and perseverance to Professor Tim Wu's cold calls. Carpou chose to attend CLS partly to join the IP-focused Kernochan Center community.

She served as Editor-in-Chief of the *COLUMBIA JOURNAL OF LAW & THE ARTS* and will begin her legal career in the corporate department of Gibson, Dunn & Crutcher's Palo Alto office.

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POPULAR KERNOCHAN CENTER SPRING IP SPEAKER SERIES CONTINUED

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Sag suggested that Congress investigate ways of reshaping the copyright laws to control this misuse of copyright law, but Greenberg cautioned that any changes to the Copyright Act must be fair to all actors and if, for instance, the Act raised fees for those filing multiple complaints, many well-intentioned plaintiffs could be unfairly penalized.

The speaker series concluded on April 12 when Kirkland & Ellis partner Dale Cendali and Joseph Gratz, a partner at Durie Tangri, debated the expansion of what constitutes transformative use when determining fair use. Gratz, who represented Google in its Google Books litigation, argued that courts are using the idea of transformation as a way to bring copyright closer to what he called its “core goal” of incentivizing creativity. Gratz said that an author is only entitled to the proceeds from markets foreseeable at the time she created her work, theorizing that the economic incentive that spurred the creation was only for these markets and that it makes no sense to argue the need to incentivize for those outlets not available at the time of creation.

“Nobody writes books so they can be indexed or word searched or divided into snippets,” he stated. Furthermore, again referring to the Google Books initiative, he noted that a transformative use doesn’t supersede the object of the original, but rather encourages productive use of it. Cendali countered that the transformative nature of the new use should not be the overarching factor in a court’s fair use analysis. The derivative work right, she argued, is too important to be cast aside, which is what often happens when new material or con-

text is added to a copyrighted work and the result is deemed to be transformative.

As new avenues for exploiting copyrighted works arise, original authors have the right to explore these new options and benefit from them, Cendali continued. For instance, refer-

ring to the *Fox News Network v. TVEyes* case currently pending in the Second Circuit (in which she is counsel for the plaintiff), Cendali argued that in searching *Fox News* broadcasts for snippets of interest and then providing them to particular subscribers, *TVEyes* doesn’t transform *Fox News*’ content – it merely usurps *Fox News*’ right to use its work in new ways.

Finally, Cendali noted that in a traditional interpretation of fair use, courts are supposed to look at the effect on the market should the allegedly infringing use become widespread, as well as the conduct of the defendant, not that of the plaintiff or the user. In doing so, Cendali believes that the courts would see that many uses currently labeled “transformative” are, in fact, violations of the derivative work right of the initial copyright holder.

The Center thanks all participants in the Speaker Series and looks forward to next year’s debates.



Joseph Gratz of Durie Tangri

ALUM SPOTLIGHT: CARRIE CASSELMAN '03, COUNSEL TO BROADWAY

By Nathalie Russell '18

When Carrie Casselman '03 discovered Columbia’s joint JD/MFA program, her decision to attend Columbia Law School was easy. Having spent two years working at the Seattle Repertory Theatre, Casselman knew it was the perfect step to follow her International Relations bachelors degree at Stanford. Today, Casselman is not only an adjunct professor for Columbia’s MFA program, but Counsel in the Media & Entertainment department at Paul, Weiss, Rifkind, Wharton & Garrison LLP.



Carrie Casselman '03

While at Columbia, Casselman served on THE COLUMBIA -VLA JOURNAL OF LAW AND THE ARTS, was a member of the Entertainment and Arts Law Society (EASLS), and took the Art Law Clinic. In addition, she was active in the Public Interest Law Foundation.

Concurrently a student in the School of the Arts, she pursued her interest in the more business-oriented aspects of theatre as part of the Theatre Management and Producing MFA program. After graduating, she spent a year clerking for Judge

Frank Coffin of the U.S. Court of Appeals for the 1st Circuit.

After clerking, Casselman was initially reluctant to become a corporate lawyer. Speaking with others in the field helped Casselman realize that her desire to work in theatre management and with producers corresponded more closely with transactional work. Today, Casselman appreciates the collaborative nature of being a transactional lawyer. She likes that both sides generally have the same goal. Furthermore, Casselman revels in the range of her work. In addition to live stage industry work, her Paul Weiss practice involves work for individual clients and producers, as well as a wide variety of larger media M&A-style transactions.

What Casselman enjoys most about teaching is learning how her students think about copyright and entertainment law in today’s unique media consumption environment. When she discusses copyright law with her School of the Arts students each year, Casselman begins by asking what they know about copyright and what they think it protects.

For Casselman, both teaching and speaking engagements, such as the April 2015 Columbia EASLS Spring Symposium, are opportunities to inform and challenge her ideas and understanding.

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Lawrence Huang '16

Carpou plans to use her CLS experience and California tech and entertainment background to focus on IP, antitrust and policy-related DMCA issues. She hopes someday to own and run a company with offices in New York and California.

The Carroll G. Harper Prize is awarded to one or more members of the graduating class who have attained the highest standards of achievement in intellectual property studies and writing. The recipients this year were Lawrence Huang and Michael Huseby.

Prior to attending law school, Huang studied acting and screenwriting and considered a job in the entertainment industry. He instead diverted this interest towards IP and copyright law. Inspired by the passion and humor of Professors Clarisa Long and Harold Edgar, Huang plans to pursue a patent and copyright law practice. He hopes to discover these disciplines as they apply to computer software during his first year as a litigation associate at Simpson Thacher & Bartlett LLP.



Michael Huseby '16

An amateur music producer, Huseby hopes someday to work at a record label or live music promotion company. He was greatly influenced by Lecturer-in-Law Mavis Fowler-Williams '87, for

whom he served as a TA. Huseby appreciated the open discussions Fowler-Williams fosters in her classes, as well as her "utmost respect for students," sense of humor and practical methodology. Huseby will begin his career at the Los Ange-

les office of Latham & Watkins LLP.

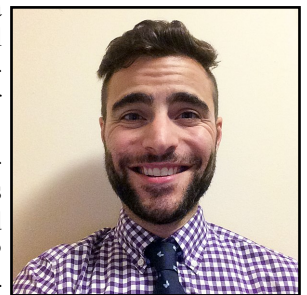
The Michael D. Remer Memorial Award is presented by the Kernochan Center to a graduating student whose activities and academic achievements demonstrated an interest in and aptitude for the fields of arts and copyright law. This year's recipients were Melanie Jolson and Hunter Vanaria.

Jolson was inspired to attend CLS by its faculty. She says the highlight of her CLS experience was working with June Besek, Center Executive Director. Besek's guidance as Jolson was writing her note solidified Jolson's interest in copyright law. After a wonderful experience at the American Society of Composers, Authors and Publishers (ASCAP), Jolson hopes to spend her legal career working with copyright law experts, whether at a firm or in-house. Jolson will begin her legal career as a litigation associate at Simpson Thacher & Bartlett LLP.

Inspired to explore intellectual property law by Tim Wu's copyright class, Vanaria found his passion for the practice of IP working with Mavis Fowler-Williams during the CLS Arts Law Externship and the seminar in Drafting and Negotiating Intellectual Property Documents. Vanaria will begin his career in Kirkland & Ellis LLP's IP Litigation group in New York. He welcomes the possibility of someday working in-house.



Melanie Jolson '16



Hunter Vanaria '16

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Your generous support will help us to continue to provide quality lectures, symposia, and events to Columbia Law School students and alumni as well as to the greater intellectual property community.

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OCTOBER 14, 2016

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PUBLISHED BY
KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS
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