

KERNOCHAN CENTER

FOR LAW, MEDIA AND THE ARTS

Summer 2014

HEAD OF EU COPYRIGHT UNIT DELIVERS MANGES LECTURE

By Alexandra Mironoff '16

Maria Martin-Prat, Head of the Copyright Unit in the European Commission, Internal Market Directorate General (DG MARKT), delivered the 27th Annual Horace S. Manges Lecture on April 7. In a lecture titled "The Future of Copyright in the European Union," Martin-Prat addressed ongoing debates concerning the need to review and reform the European Union copyright rules, outlining the drivers and key issues behind these debates as well as possible steps for moving forward.

Martin-Prat began her lecture by summarizing the European Union's system of copyright rules and its application in the 28 jurisdictions of its member states. The European Union's objective, Martin-Prat emphasized, is to establish a functioning internal market, and the directives that comprise the European Union's current body of common rules are intended to harmonize the copyright laws of its individual member states.

She asserted that a rational review of the copyright rules is required to maintain the legitimacy of the European system. Moreover, describing the member states as "locked in the process



Maria Martin-Prat spoke about "The Future of Copyright in the European Union" at the 27th Annual Horace S. Manges Lecture on April 7.

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IP SPEAKER SERIES ADDRESSES FAIR USE AND ONLINE INFRINGEMENT

The Center's IP Speaker Series has continued to be a huge success, often with standing-room-only crowds. On March 11, Public Knowledge's Sherwin Siy and Willkie Farr & Gallagher's Joseph Baio discussed the effects of statutory damages in copyright litigation. Siy argued that large verdicts like those delivered in cases such as *Sony BMG v. Tenenbaum* don't seem to influence future behavior and can lead to baseless suits against non-infringing users. The problem, Siy noted, lies in the language of the Copyright Act, whose statutory damages provisions, based on a per-work-infringed scheme, are outdated and need to be redrafted. Baio discussed the *AFP v. Morel* case, which his firm handled. In that case, an independent photographer took pictures of the 2010 Haitian earthquake which were then distributed by Agence France-Presse without the photographer's permission or the correct attribution. The photographer,

Morel, sued and was awarded \$1.2 million in damages. AFP is appealing the verdict based on the statutory damages awarded, arguing that it is 60 times the amount of actual damages. Baio said the damages amounts in cases such as this have to be large; otherwise they do not send a strong enough message to infringers and even large statutory damages barely cover the actual cost of litigating the case.

NYU Law Professor Barton Beebe and Thomas Kjellberg of Cowan Liebowitz & Latman, P.C. provided an update on fair use controversies on April 15. Beebe presented updates to his 2003 study on fair use judicial decisions and the weight courts give the four factors. While acknowledging that the idea of transformative use was becoming a much more important factor in judicial consideration, he expressed concern that there was a perception that fair use was becoming too broad. Kjell-

berg noted that the goal of a fair use defense should be equity, but companies have found that this is difficult to achieve. He emphasized that litigation is not always the best way to advance a fair use defense. Sometimes, it can be better to stall and wait for technology to "catch up," as Google did in the controversy surrounding its digitization of libraries' collections. At a certain point, mass digitization gained more acceptance in the courts just from having become part of the collective consciousness.

The last program in our series focused on graduated response and the need to regulate online infringement. Speakers Stanley Pierre-Louis of Viacom, and An-nemarie Bridy of the University of Idaho College of Law, debated the system of graduated response to infringement recently implemented in the United States and codified in some countries. Under the U.S. system, internet users engaged in illegal actions are warned six times be-

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of harmonization that has taken place during the last two decades,” Martin-Prat contended that any substantial update to these rules must be conducted on a European level rather than on a national level. In support of her claim, she pointed to the centrality of the Court of Justice in the interpretation of European copyright law and its work to establish uniform application of copyright rules and to eliminate legal uncertainty arising from inconsistencies among the member states.

In delineating the principal issues driving the debates on reforming the copyright rules in Europe, Martin-Prat identified the strain placed on copyright systems all over the world and on basic concepts of copyright as a result of developments in technology, social media, and sharing platforms. She highlighted three issues in particular that must be addressed in order to safeguard the balance between the interests of right holders and users while maintaining a smoothly functioning internal market: territoriality; the limited degree to which limitations and exceptions have actually been harmonized at a European Union level; and the flexibility of the copyright rules to adapt to the evolution of technology.

Martin-Prat suggested that the European Union should focus on establishing clearly defined rights and more fully developing the internal market in the European copyright system. She stressed that this will require consideration of how to balance the need to protect the rights of copyright holders with the need to avoid unnecessarily restricting cross-border access to and portability of services. She indicated that the European Union must determine which limitations should be harmonized in light of cross-border use potential and public

policy objectives; establish a mechanism to ensure consistent interpretation among the member states; and make sure measures eliminating territoriality in favor of harmonization do not also do away with the protections of right holders. Martin-Prat further noted that this will require examination of whether the European Union’s current system of enforcement of rights is equipped to function across borders and jurisdictions. In order to achieve these objectives, Martin-Prat posited that the European Union could attempt to create a higher level of harmonization on the basis of another directive, or else it could establish a copyright code in the form of a regulation that would directly apply to the member states once adopted at the level of the European Union.

In conclusion, Martin-Prat emphasized that, in the “explosion of new and innovative means to legally disseminate copyright-protected content” that has taken place over the last 10 years, there is now more legal access to knowledge, culture, and entertainment than ever before, and that going forward will require “rebalancing and de-dramatizing” the debate surrounding copyright in Europe. She stressed the importance of understanding the value of copyright to society as a whole and the need for rights to be respected and enforceable in order to remain meaningful. In turn, it must be acknowledged that current rules may need clarification or adjustment where their application in a digital environment leads to unwanted results. The single market sought by the European Union, Martin-Prat concluded, represents an opportunity for all of the stakeholders in the copyright debate.

KERNOCHAN CENTER AND CLS AWARD ACADEMIC PRIZES IN IP & COPYRIGHT LAW

Each year, the Kernochan Center and Columbia Law School award prizes at the Law School’s graduation ceremony. 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 Esther Adzhiashvili ’14 and Olena Vera Ripnick ’14.

Esther Adzhiashvili is a true New Yorker and could not imagine living anywhere else. Adzhiashvili thinks that New York is the legal industry’s epicenter in many areas and she perceived Columbia’s access to so many practitioners as adjunct as a great advantage. She was very inspired by her fellow classmates throughout her studies. “They are an incredibly impressive group of individuals,” Adzhiashvili said. “Experiencing their drive, passion, and work ethic certainly inspired me and will continue to do so in the future.” Adzhiashvili will be starting as an associate at Skadden, Arps, Slate, Meagher & Flom LLP this fall. She’s an “inexplicably loyal Knicks fan” and she would love to work for the National Basketball Association (NBA) in the future.

Olena Ripnick worked for a major film studio prior to

attending law school. “I knew that I wanted to practice intellectual property law,” said Ripnick. She chose to attend Columbia due to its strong IP program as well as its sexuality and gender law programs. “I felt that Columbia Law would be a community in which I would thrive intellectually while building a strong foundation for my professional practice.” In September, Ripnick will start as an associate with Debevoise & Plimpton LLP. She hopes to practice domestic and international copyright litigation. “I am particularly interested in the implications of new technology for copyright law, especially with regard to fair use and fair dealing, in both the domestic and international context,” she said. “Additionally, I plan to dedicate my *pro bono* practice to working with Volunteer Lawyers for the Arts to ensure that our local artists have access to intellectual property education and representation.”

The Andrew D. Fried Memorial Prize for the best student essay to be published this year in the Columbia Journal of Law and the Arts on a subject in the field of intellectual property and related law was awarded jointly to Nithin Kumar ’14, Margaret (Megan) A. Larkin ’15 and Michael Jacob Zaken ’14.

Nithin Kumar was impressed by Columbia Law’s great

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reputation, but he also wanted to “experience living in the one of the greatest cities in the world.” Kumar anticipates that his future law practice will include most, if not all, aspects of intellectual property. “I plan to do some patent work, and I would certainly welcome copyright, trademark and particularly, trade secret work,” Kumar said. “I also believe that privacy-related issues will play a central role in the future, and I hope to play a part in some of the exciting developments that are sure to come in that area of law. Kumar is looking forward to returning to Los Angeles where he plans on joining Quinn Emmanuel Urquhart & Sullivan, LLP as an associate.

Megan Larkin says she got invaluable advice and insight from Professor Jane Ginsburg regarding copyright law, the internet and digital technology, which was instrumental in the publication of her paper, *The Demise of the Copyright Act in the Digital Realm: Re-Engineering Digital Delivery Models to Circumvent Copyright Liability After Aereo*. She would like to focus on patent and copyright litigation following her law studies. Before attending Columbia, Larkin worked in advertising as a media strategist for clients such as ESPN, Mohegan Sun, and the Bank of New York Mellon. She is currently a 3L and will be graduating next spring.

Michael Zaken worked at a radio station in college and the way technology was rapidly changing in that industry drew him to law school. “I was interested in exploring the interaction between copyright law and the increasingly changing way that we create and consume art, music and literature,” said Zaken. “Columbia’s curriculum and faculty offered an unmatched chance to explore these issues.” Zaken hopes to litigate IP and antitrust related cases with an international scope. He reads ancient Greek, Latin, Aramaic, and Hebrew and was able to put his Latin studies to use while working on a project with Professor Jane Ginsburg. The project involved early copyright history and he was tasked with transcribing and translating 16th and 17th century Papal privileges.

The Michael D. Remer Memorial Award is awarded annually and presented by the Kernochan Center to a graduating student whose activities and academic achievements demon-

strated an interest in and aptitude for the fields of arts and copyright law. This year’s recipient was Abigail Bain Everdell ’14.

Everdell was first attracted to Columbia’s resources in arts law and copyright. After taking one copyright class, she was “sold,” she said. Professors Wu and Ginsburg inspired her studies, and so did quite a few adjunct professors including Ed Klaris and Rob Balin, who taught a Media Law seminar that Everdell found “absolutely riveting.” “Initially I had thought copyright would be my primary focus, but in the past year I have become interested in broader media law and information privacy law issues,” said Everdell. “Ideally I’d like my career to encompass all those areas.”

Everdell will be starting at Debevoise & Plimpton LLP this fall. She hopes to work as much as possible in their IP and media litigation practice. Before attending law school, Everdell worked at *Spin Magazine* as a rock critic. She has worked or interned in virtually every field of the arts, including at a record label, a large art museum and two different publishing houses.

SPRING IP SPEAKER SERIES CONT'D

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fore their internet service is eventually slowed or suspended. Bridy stated that she supports these efforts by ISPs to enforce copyrights in a way that does not intrude on users’ private information (copyright owners do not receive the name of the alleged infringer) and incorporates a review process that is both procedurally fair and affordable. But, she argued, the cons are great as well. She says the system assumes guilt of the internet user and that withdrawing internet access is an inappropriately harsh punishment for infringing activity. Pierre-Louis disagreed, saying that the multi-strike system is necessary to combat the rampant use of pirated materials on the web. In fact, he noted, this type of enforcement mechanism was not a new idea, but one based on best practices outlined in the User-Generated Content agreements of 1997. “It is important,” he said, “to level the playing field so legitimate offerings can thrive.”

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KERNOCHAN CENTER WELCOMES SZEWCZYK AS ITS NEWEST FELLOW



The Kernochan Center welcomed its newest IP fellow when Bart Szewczyk (pronounced SHEF-chick) joined the Center on July 1. Szewczyk spent the last two years at the Law School as an Associate-in-Law working on international economic law.

He wishes to expand his research into the intersection of economics and intellectual property and will spend his two years with the Center investigating the impact of multi-lateral trade agreements on intellectual property laws and enforcement. In addition, he will teach International Copyright Law with Professor Ginsburg in the spring.

Szewczyk attended the University of Pennsylvania's Wharton School where he received a B.S. in Economics. He received a M.P.A. in Economics and Public Policy from Princeton University's Woodrow Wilson School and a Ph.D. in International Relations from Cambridge University. He received his J.D. with a master's degree in Public Affairs in a joint degree program at Yale Law School.

He started his career as an associate at Wilmer Cutler Pickering Hale & Dorr LLP. He clerked for the International Court of Justice in the Hague and for Judge Leonard I. Garth of the U.S. Court of Appeals for the Third Circuit. He is a term member of the Council on Foreign Relations and a member of the Executive Council at the American Society of International Law.

When he is not researching and writing, Szewczyk enjoys traveling and playing sports. He has also begun sailing and is spending the summer exploring the Long Island Sound by boat.

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