



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

COLUMBIA UNIVERSITY SCHOOL OF LAW

SPRING 2007

Kernochan Center Welcomes Alumna as New Assistant Director

Pippa Loengard went to law school to work on arts-related issues, and in her new position at the Kernochan Center she has an opportunity to do exactly that. Pippa, a 2003 CLS graduate, joined the Center in October as the Assistant Director. With the fall term already in full swing, she had her work cut out for her, and immediately set to work coordinating the Center's summer internship program, planning panels and programs and working on Center research projects. She particularly enjoys interacting with the students, especially students interested in going into the arts, since she knows what they're going through. Pippa herself participated in many of the Center's activities when she was in law school. She was a summer intern at KCET in Los Angeles, and an Articles Editor for the COLUMBIA JOURNAL OF LAW & THE ARTS. She also took advantage of several of the law school's IP courses and seminars.



Pippa Loengard, new Assistant Director of the Kernochan Center

After earning an M.A. in Communication from Stanford, Pippa worked as a television producer in Los Angeles and New York. That experience stimulated her interest in arts and

media law and led her to Columbia Law School. From law school she joined Kramer Levin Naftalis & Frankel LLP, then went on to study tax law at NYU Law School. Her tax law background is also useful in her current position because, as she points out, the tax law has important ramifications for charitable institutions as well as for individual artists. She is currently planning a Fall program on the changing laws regarding fractional gifts and the impact the Pension Protection Act is having on the way donors structure their long-term gifts to museums and other charities.

Pippa is happy at the prospect of becoming immersed once more in arts and media issues. "The Kernochan Center is an amazing place," she says, "because it's one of the few law centers that focuses not only on intellectual property but also on other areas of the law that affect the arts community. It's here to provide information and discourse, for the law school and the broader arts and media community." She enjoys the opportunity to bring to Columbia leaders in the IP and arts fields who are working on cutting edge issues.

One of Pippa's goals is to focus more on the "arts" aspect of the Center's mission. She hopes to bring more speakers on arts-related issues to the law school, and add more summer internships at museums with which the Center does not already have established relationships. She recently attended a conference on "Legal Issues in Museum Administration" sponsored by ALI-ABA, where she was able to make and renew some valuable contacts and get ideas for new programs at Columbia.

Young Alumni Come Back to Campus for Annual Career Panel

On January 23, several alumni returned to campus to discuss their careers in intellectual property and entertainment law. Panelist Charlotte Pontillo, '03 spoke on her experience practicing patent law at Kirkland & Ellis and the misconception that one needs a scientific background to be a successful practitioner. Michael Bogner, '05 and John Saroff, '04 emphasized the importance of working in the field you want to enter while you are still in law school. Both Bogner and Saroff interned at entertainment companies during their time at Columbia. They felt it was not only a wonderful experience but also instrumental

in getting hired in the competitive field of entertainment law. After a year at Cravath, Swaine & Moore, John is now Director of Content Acquisition at nbbc, a division of NBC Universal. Michael is a litigator at Quinn Emanuel. Carolyn Casselman, '03 and Jason Cooper, '02 both work in theater law. Carolyn is at Paul Weiss and Jason is the Business Affairs Executive in the theater department at Creative Artists Agency. Both stressed the importance of keeping up-to-date on the changing law in your field of interest and in being knowledgeable about the practice you wish to enter.

Adding to the discussion were eight

alumni, also practicing in the field, who were able to give unique perspectives to the students in attendance. One attendee, Rhea Gordon, '05 discussed the interplay of tax and art law from her perspective as a tax associate working with high-net worth individuals at Debevoise & Plimpton. Caroline Boehm, '04 shared her story of transitioning from a career in securities litigation to her current job in trademark law. Heather Schneider, '06 brought insight about being a new associate in a big firm and Jessica Whiting, '03, Wendy Szymanski, '03 and Rebecca Hughes-Parker, '04 discussed the issues

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Spring IP Speaker Series Brings Noted Litigators and Policy-Makers to Campus

The beginning of the spring semester brought the return of the Kernochan Center's Spring Intellectual Property Speaker Series. Hosted in conjunction with June Besek and Jane Ginsburg's seminar on advanced copyright issues, the lunchtime series brought a cadre of distinguished speakers to the law school. On January 16, Steven Metalitz of Mitchell Silberberg & Knupp LLP and Jonathan Band, Esq. discussed digital rights management software and the anti-circumvention provisions of the Digital Millennium Copyright Act ("DMCA"). Section 1201(a)(1) of the DMCA mandates triennial reviews by the Copyright Office to determine if additional exceptions to the DMCA are warranted. Much of the discussion focused on the results of the then recently concluded 2006 Copyright Office rulemaking as well as on the broader question of whether the DMCA's prohibitions are restricting permissible uses of copyrighted works. Mr. Metalitz explained that the DMCA was passed to protect copyright owners who want to enter the "on demand" and "limited download" markets, and that those markets have thrived since it was passed. He also suggested that the relatively small number of applications for exceptions in the eight years since the DMCA was passed indicated that the Act was not overreaching. Mr. Band raised concerns that the Act created antitrust problems and interfered with legitimate uses of copyrighted materials. For instance, he contended that consumers who own digital media in one form and wish to convert it to another should be allowed to do so without violating the law, even if they have to circumvent technological controls.

Bob Clarida, '93 of Cowan, Leibowitz & Latman, P.C.

and Carol Witschel from White & Case LLP came to talk to students later that month about the growing case law on "appropriation art." By looking at cases such as *Rogers v. Koons*, *Campbell v. Acuff-Rose* and *Blanch v. Koons* (Ms. Witschel represented one of the defendants in the latter case), the speakers charted the legal history of art that makes more than a *de minimus* use of pre-existing material. Both practitioners noted that the trend seems to favor defendants as the public and the courts learn more about appropriation art and become more comfortable with it. Yet they were quick to note that no one case can provide clear guidance as the courts' analyses are so fact-specific.

Wendy Seltzer, a visiting professor at Brooklyn Law School and fellow at the Berkman Center at Harvard, debated the merits of Creative Commons licenses with Joan McGivern and Harry Poloner from ASCAP on February 12. Seltzer gave an overview of the different types of Creative Commons licenses. She explained that a license that permits free use conditioned on attribution or permits free use for non-commercial purposes might be attractive to an artist more interested in dissemination of her material than in financial gain. Focusing on the needs of songwriters, McGivern, ASCAP's Vice President of Legal Corporate Affairs, and Poloner, Vice President of Membership, warned of the possible risks to songwriters who publish under Creative Commons licenses without realizing the implications. The panelists addressed the concerns over the vagueness of the term "non-commercial" and whether Creative Commons licenses were subject to the termination rights in the Copyright Act, even though they purport to be irrevocable.

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Young Alumni Come Back to Campus



Paul Gutman, '04 and Rhea Gordon, '05 enjoy the cocktail reception following the Young Alumni Panel.

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that often come up in the day-to-day practice of a mid-level IP associate.

Paul Gutman, '04 and Isaac Dunham, '04 both work at entertainment boutiques. Paul works with musicians at the boutique firm of Carroll, Guido & Groffman, and Isaac has a general entertainment practice at Schreck Rose Dapello & Adams. Both discussed working at a smaller firm and their specialized practices. Ted Sabety, '98 had a unique perspective on the discussion, as he has started his own firm with a focus on technology – a field in which the law is complex and ever-changing.

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Kernochan Center hosts debate on Constitutional Challenges to Copyright

The past several years have seen an increase in challenges to copyright based on constitutional grounds. Cases such as *Eldred v. Ashcroft*, *Luck's Music Library, Inc. v. Gonzales*, and *Golan v. Gonzales* have challenged the constitutionality of the United States copyright laws. On October 27, 2006, the Kernochan Center presented "Constitutional Challenges to Copyright," a day-long symposium on the issues surrounding the scope of the Copyright Clause and its relationship to other clauses of the constitution. Co-sponsored by the COLUMBIA JOURNAL OF LAW & THE ARTS, the symposium featured distinguished academics from around the country, and sparked several rousing discussions about attempts to shape copyright law through Constitutional litigation.

The Honorable Marybeth Peters, U.S. Register of Copyrights, gave the keynote address, discussing the history of copyright, the current controversies and her insights into the future of the law. The first panel of the day discussed the powers the Copyright Clause grants Congress and the inherent limitations. The second panel focused on whether regulations outside the scope of the Copyright power may be permitted under the Commerce Clause or the Treaty Power. The third panel debated the relationship between copyright and the First Amendment.

Transcripts of the panel discussions, as well as papers from the speakers, will be published in an upcoming issue of the COLUMBIA JOURNAL OF LAW & THE ARTS. If you would like to purchase a copy of this issue of the JOURNAL, please contact the Managing Editor Erin Reid at enr2101@columbia.edu.



The Honorable Marybeth Peters, U.S. Register of Copyrights, delivers the keynote speech at the Constitutional Challenges to Copyright Symposium on October 27, 2006.



Professor Tom Nachbar addresses the audience while fellow panelists Dotan Olliar and Graeme Dinwoodie, J.S.D., '00 listen to his arguments at the Constitutional Challenges to Copyright Symposium on October 27, 2006.

New Classes added to Columbia's IP Curriculum

Columbia Law School's Intellectual Property curriculum is growing! This Spring a host of new courses is being offered. Jane Ginsburg is co-teaching an upper-level colloquium on international intellectual property law with Professor Rochelle Dreyfuss of New York University Law School. The class focuses on questions arising out of the globalization of intellectual property markets, such as harmonization of IP law; IP and international trade; and choice of law in transnational adjudication. Outside speakers present papers on topics they are currently researching, and students conduct independent research on the topics discussed in class. The class meets twice weekly, once at Columbia and once at NYU.

The first-year curriculum has been revamped, and Professors Clarisa Long and Tom Merrill have created a class that will introduce first-year students to the concepts that underlie intellectual property. The class does not focus on the nuts and bolts of patent, copyright, and trademark law, but rather, uses intellectual property concepts as a means to analyze property rights in general. The class examines topics such as the theoretical justifications for granting intellectual property rights, what kinds of creations ought to be protected, and how intellectual property rights are affected by contract law and changing social norms. This new offering is part of the retooled first-year curriculum that allows first-year students to choose one elective in the spring semester.

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Spring IP Speaker Series

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One of the highlights of the Spring IP Speaker Series was a panel given on February 27 entitled “Ancient Objects in Modern Times: Perspectives on Preserving and Collecting Antiquities Today.” There will be more on this program in the next newsletter – stay tuned!

On March 20, Jeffrey Cunard of Debevoise & Plimpton LLP and Nancy Wolff of Cowan, DeBaets, Abrahams & Sheppard LLP discussed the proposed “orphan works” legislation. “Orphan works” refers to works whose copyright holder cannot be located. Subsequent creators fear that if they use these works without permission, they will be liable for extensive damages, or enjoined from further distribution of their works, should the rights holder later come forward. In its January 2006 Report, the Copyright Office advocated legislation that would limit the remedies available against good-faith users who had performed a diligent search for a rights holder to reasonable compensation for the use (and in some cases no compensation would be required). Cunard, in comments to the Copyright Office filed on behalf of the College Art Association, had advocated a cap on damages that a user could be required to pay. Wolff, a strong advocate of artists’ rights, reminded the audience that it is a long-held principle of American copyright law that the user has the responsibility to acquire the necessary rights. She pointed to the overwhelming number of photographs currently used on the Web without compensating the artists, and expressed the concern that the cost of filing suit could be for many artists greater than the “reasonable compensation,” leaving them with no effective remedy.

On March 27, Gillian Lusins, ’90 and John Delaney, ’89 spoke on new business models for distributing copyrighted works in the age of YouTube and MySpace. Lusins, counsel in the IP Group at NBC Universal, spoke of the issues that sites distributing user-generated content pose. She also discussed the company’s new website (a joint-venture with News Corp.) that will include content from their library as well as user-generated material. Delaney, who practices at Morrison & Foerster LLP, began by showing examples of a range of user-posted content, from the primarily user-generated (such as wedding videos), to mashups, to the posting of material directly copied from television programming. He then focused on the future of websites which feature copyright-infringing user-generated content in the wake of the recent Viacom lawsuit against Google, the owner of YouTube. He also analyzed the provisions of section 512(c) of the DMCA that will determine whether YouTube qualifies for the “safe harbor.”

The Kernochan Center mourns the passing of Adelaide Kernochan, wife of John Kernochan. Mrs. Kernochan was a generous and beloved friend of the Kernochan Center and all those in the Columbia Law School community who had the good fortune to know her. Through her work with the United Nations, she was an effective and zealous advocate for an increase in global knowledge in education systems at home and abroad. We extend our condolences to her family and friends.