

COLUMBIA UNIVERSITY SCHOOL OF LAW  
KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS  
435 WEST 116TH STREET, BOX A-17  
NEW YORK, NEW YORK 10027



PUBLISHED BY  
KERNOCHAN CENTER FOR LAW,  
MEDIA AND THE ARTS  
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25TH ANNUAL MANGES LECTURE  
APRIL 2, 2012

“DIGITIZE, DEMOCRATIZE:  
LIBRARIES AND THE FUTURE OF BOOKS”

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TO RSVP, PLEASE EMAIL BY MARCH 28, 2012  
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# KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS

Spring 2012

## SPRING IP SPEAKER SERIES BEGINS WITH ALUMS, VISITING SCHOLARS



*Michael Elkin of Winston & Strawn LLP talks about “Digital Storage Lockers and Copyright” during the IP Speaker Series on February 7*

Susy Frankel, Professor at Victoria University of Wellington in New Zealand, began the Center’s Spring IP Speaker Series on January 24. Her talk centered on New Zealand’s attempts to balance its indigenous people’s rights in their traditional knowledge with the country’s current copyright regime.

New Zealand’s Maori tribes have a rich cultural history and are keen for New Zealand to create laws ensuring it is respected at home and abroad. Many members of the various tribes would like legislation that allows tribal leaders to control how ritual songs, dances and characters are used in commercial and noncommercial settings.

Frankel has been part of a working group responsible for drawing up the country’s response to Maori IP claims. Her committee recommended that current copyright law be amended to provide formal objection procedures that the Maori can use if they feel their native heritage has been used in a derogatory or offensive manner.

On February 7, Carletta Higginson ’03 and Joseph McFadden ’05 of Jenner & Block LLP and Michael Elkin of Winston & Strawn LLP examined the Southern District of New York’s recent decision in *Capitol Records v. MP3tunes.com* and illuminated the copyright issues surrounding the use of

*(Continued on page 3)*

## NEWEST VISITING SCHOLAR STUDIES COPYRIGHT AND GRAFFITI

The Kernochan Center welcomed its newest visiting scholar, Celia Lerman, to the Columbia community in January. Professor Lerman comes to the Law School from Buenos Aires, Argentina, where she is a Visiting Professor and Intellectual Property Fellow at the Universidad Torcuato Di Tella School of Law.

After graduating as valedictorian in 2008 from the Universidad Torcuato Di Tella School of Law, Professor Lerman was awarded a full scholarship to complete her LL.M. in Intellectual Property at the Universidad Austral in Buenos Aires.

She completed her LL.M. in 2010, while simultaneously working as an intellectual property associate at a leading Argentine law firm. After the completion of her LL.M., she was invited to join the faculty at her alma mater, where she currently teaches several intellectual property courses including “Intellectual Property 2: Trademarks & Patents” and “Topics on Intellectual Property Law.”

While at Columbia, Professor Lerman is studying the intellectual property issues surrounding graffiti art and examining the extent to which graffiti is protected by copyright in the United States. She has already contributed to the academic discourse at CLS by participating in the Kernochan Center’s Spring IP Speaker Series where, on February 14, she spoke about her research to date (for

more information on Professor Lerman’s February presentation, see above story).

Professor Lerman decided to come to Columbia because of its international reputation and distinguished IP faculty and programs. Furthermore, as her work focuses on graffiti art, she was excited about being in New York where there have been many cases of artists suing and being sued by building owners.

As her research on American copyright has progressed, particularly as it relates to the visual arts, she has been struck by the country’s attempt to incorporate moral rights. “The most important thing I have learned is that one should be very careful when incorporating foreign legal structures into domestic laws. For example, the Visual Artists Rights Act provides a middle-ground protection between local preservation laws and Continental moral rights, but the scope is unclear for both courts and parties,” she noted.



*Celia Lerman*



JO BACKER LAIRD ’80 RETURNS TO CLS AS ADJUNCT PROFESSOR

Jo Backer Laird ’80 returned to Columbia Law School this Spring as an adjunct professor, co-teaching the Seminar in Law and The Visual Arts with the Center’s Assistant Director, Pippa Loengard. Laird had previously taught the class at Cardozo Law School and was excited to come back to her alma mater to teach in an area in which she has extensive experience. As former General Counsel of the auction house Christie’s and in her current role Of Counsel at Patterson Belknap Webb & Tyler LLP, Laird has been at the forefront of the art law field for many years.

Laird came to law school after receiving her undergraduate and M.P.A. degrees from Princeton University. She had known she wanted to be a lawyer since her teen years while volunteering on a congressional campaign where she noticed that the lawyers were the problem solvers.

Law school was “intense,” but Laird was buoyed by classmates whom she found smart, quick and funny. “I still smile (or even laugh out loud),” she said, “when I remember one particular criminal law class. Professor Edgar posed a hypothetical about duress as a defense. He asked each of us to imagine that we were in a bank when two people come rushing in and lock themselves in the vault. Only we know the combination. Hot on their trail, a gunman runs in and puts a gun to our head. He says that he is going to shoot the people in the vault, but would shoot us instead if we don’t open the lock. What would we say? With perfect and immediate timing, a classmate to my left said, ‘27 Right. 15 Left. 20 Right.’”

Her first year courses had a huge impact on her as she learned there was a new way to analyze and think through a

problem. Suddenly, the whole idea of what it meant to think like a lawyer became apparent. This served her well when, after graduation, she became an associate at Davis, Polk & Wardwell LLP. She worked in the litigation department for seven years. It was there she learned what she says are the tenets of her career: “Be careful. Try to get it right. Be fair. Be thorough. Be civil. Admit when you make a mistake and learn from it.”

In 1987, Laird went in-house to Morgan Stanley, a former client, and worked for 10 years, eventually focusing on employment law and personnel matters. She joined Christie’s in 1997 having little prior knowledge of the art market, but a deep interest and eagerness to learn. She left in 2008 and joined Patterson Belknap, a firm known for its experience in the areas of art and nonprofit law.

These days, Laird orchestrates the legal side of multi-million dollar art transactions, and also returns to her days as a litigator when there are art-related disputes. She greatly enjoys sharing her experience with CLS students. She explained, “Teaching exercises brain muscles that don’t get a good workout doing anything else. It forces you to understand things well enough to be able to explain them in a meaningful way. And it gives you the opportunity to test your thoughts and your analyses by sharing them with smart people who bring fresh eyes to every issue.”

She is now the problem solver, both for clients and students, that she had hoped to be as a child. “It turns out I really like being a lawyer...just as I thought I would when I was 14. It suits me.”

PIERRE-LOUIS, GRATZ DEBATE CONTROVERSIAL SOPA/PIPA BILLS

The Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA) have generated a lot of controversy since their introduction last year. Both bills sought to expand the United States’ ability to fight illegal trafficking of copyrighted materials through measures such as blocking U.S. access to sites trafficking in infringing materials and forbidding U.S. financial companies from processing payments to these sites.

Viacom’s Stanley Pierre-Louis and Joseph Gratz of the San Francisco law firm Durie Tangri came to CLS on February 28 as part of the Spring IP Speaker Series to provide both sides of the debate. Pierre-Louis began the lunch talk with an explanation of the two bills and a description of what he sees as the current problems stemming from illegal downloading.

He answered critics by noting that increased enforcement mechanisms were necessary as there is currently almost no way to touch off-shore companies trading in illegal content. Furthermore, courts could only act if plaintiffs met their burden of proof.

Pierre-Louis expressed disappointment with the media’s reaction to the bills. Arguing that many of the contentious issues could have been dealt with through the legislative process, he said tactics such as crowd-turfing (where companies against the bills sponsor people to send protest letters to Con-

gress) killed the legislation despite its potential.

Joseph Gratz acknowledged that there is a piracy problem, but argued that these bills were overreaching. First, he expressed concern about restricting Americans’ access to the internet, echoing the First Amendment concerns of many groups who protested the Acts.

Claiming that internet freedom drives economic, political and social growth and noting that countries with restricted internet access are behind in many of these areas, Gratz felt segmenting the internet was a line that should not be crossed.

Furthermore, Gratz expressed concerns that there could be grave errors in due process as these Acts are implemented. He pointed to many instances where the government has mistakenly ordered sites to be taken down.

He also voiced policy concerns. First, he does not want American sites to be blocked by foreign countries in retaliation, and secondly, he feels the United States will lose credibility in its attempts to advocate for free speech in other countries if it restricts the internet domestically.

SPRING IP SPEAKER SERIES BEGINS WITH ALUMS, VISITING SCHOLARS

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digital storage lockers. McFadden explained the importance of the case noting that, in an internet age, intellectual property’s value is in its “access and delivery” and not just in the content itself. He then posed the question of whether people have the right to build businesses they know to be infringing content. Higginson explained the “knowledge” requirements of the DMCA and posited that courts have recently conflated “red flag” knowledge with actual knowledge. Finally, Elkin elaborated on the history and policy implications of the DMCA and explored how the red flag requirement is often viewed as a “slippery slope” and how too broad a definition will confuse the safe harbor provision of the DMCA.

Kernochan Center Visiting IP Scholar Celia Lerman spoke on her research into American treatment of graffiti art on February 14. Lerman was involved in a case involving graffiti in her hometown of Buenos Aires, which sparked an interest in the field. Her presentation focused on the copyrightability of graffiti works and what other types of protection graffiti artists might be able to pursue. Lerman said that most graffiti meets the standard for copyrightability, namely that they are original works fixed in a tangible medium. But while copyright may protect reproductions of the works, it is very hard for artists to protect the original physical incarnation of their works as they are often created illegally. For instance, Lerman noted, courts

have refused to allow graffiti artists to invoke their rights under the Visual Artists Rights Act in instances where a work was created without the property owner’s permission. For more on Professor Lerman’s stay in the United States, please see the profile on page 1.

The IP Speaker Series continues with four more lectures over the course of the term. We will profile these in our next issue.



Celia Lerman presents “Protecting Artistic Vandalism: On Graffiti and Copyright” on February 14

LINCOLN CENTER GC DISCUSSES LEGAL NEEDS OF NONPROFITS



Lesley Rosenthal speaks about “Meeting the Legal Needs of Non-Profits,” at Columbia Law School on February 29.

Lesley Rosenthal, the Vice President, General Counsel, and Secretary of Lincoln Center for the Performing Arts, visited Columbia on February 29 to speak about her experiences working in-house at a nonprofit organization.

Ms. Rosenthal, who recently published a book titled *Good Counsel: Meeting the Legal Needs of Nonprofits*, began by

discussing her career path with students and debunking common myths about working in-house at an arts organization.

Ms. Rosenthal then shared the history of Lincoln Center and described some of the legal issues associated with running the complex, which houses 11 preeminent arts organizations and is governed by a 75-person board.

Throughout her presentation, Ms. Rosenthal underscored the importance of interpersonal relationships. It is important to not only be well-versed in the law, but also to be an approachable figure with whom people feel comfortable sharing their ideas and asking questions.

Too often, Ms. Rosenthal noted, lawyers are viewed as the “Department of ‘No’.” Instead, she argued, lawyers should show that they are committed to furthering the goals of the organization for which they work and should do their best to encourage creativity. The lawyer has done her job, Ms. Rosenthal concluded, “when the legal review is invisible.”



Rosenthal discusses her nonprofit experiences with CLS students following her presentation