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

COLUMBIA UNIVERSITY SCHOOL OF LAW

SUMMER 2006

Kernochan Center Co-Sponsors Symposium on Law and Theater with Columbia Journal of Law & the Arts

On March 31, 2006, the Columbia Journal of Law and the Arts, in partnership with the Kernochan Center, EASLS and Columbia's School of the Arts, presented a symposium entitled "How the Show Goes On: Law and Theater in the 21st Century." This full-day event gathered top lawyers, producers, artists and other professionals engaged in live theater production to discuss the current legal and business issues affecting the theater world in New York City and beyond. The inspiration for the symposium came from Steven Chaikelson's popular "Law and Theater" seminar, which Editor-in-Chief Joss Nichols and Symposium Editor Sidne Koenigsberg took last spring. As Nichols explained, "Theater is a business as well as an art, and we aimed for our panels to shed light on an industry that unavoidably impacts people who live and study in New York City, regardless of their interests."

The program began with a keynote address by Ben Cameron, Executive Director of the Theatre Communications Group (TCG). TCG is the national organization for America's not-for-profit professional theaters, with over 400 member theaters in 47 states, and is the publisher of *American Theatre* magazine. Mr. Cameron, currently a member of the adjunct faculty at Columbia, described the importance of theater to our communities in terms of economic impact, educational benefits and the promotion of tolerance and social dialogue. He encouraged his

audience to become "activists for the arts." He also provided a valuable history of the regional and not-for-profit movement in theater which led nicely into the morning's next event, a panel on not-for-profit theater.

Each of the symposium's four panels was moderated by a Columbia Law School graduate with experience in theater law. Carrie Casselman, '02, an associate at Davis Wright Tre-

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Carrie Casselman '02, Davis, Wright and Tremaine LLP, Keynote Speaker Ben Cameron and Columbia Journal of Law & the Arts Editor, Joss Nichols '06

Kernochan Center Welcomes Professor Tim Wu



Professor Timothy Wu

Professor Tim Wu joined Columbia Law School in Spring 2006, a welcome addition to the faculty. Professor Wu's interests lie in intellectual property, telecommunications and international law. He is a prolific writer on legal issues related to the Internet. His book, *Who Controls the Internet?: Illusions of a Borderless World*, co-authored with Professor Jack Goldsmith of Harvard Law School, was published by Oxford University Press earlier this year.

Professor Wu has a strong background in science, having majored in biotechnology at McGill University, where he worked through college as a computer programmer. After graduating from Harvard Law School he clerked for Judge Richard Posner on the United States Court of Appeals for the Seventh Circuit, and then for Supreme Court Justice Steven Breyer. He

worked for a telecom company in Silicon Valley until he joined the faculty at University of Virginia Law School. Professor Wu was a visiting professor at Columbia in Fall 2004, and joined the faculty after completing stints last year as a visiting professor at the University of Chicago and Stanford Law School.

The breadth of Professor Wu's interests is apparent from the courses he teaches. This past spring he taught a course on World Trade, Development and the Law and a seminar entitled "Outlaws, Compliance and Design of Legal Systems." This fall he will teach courses in Telecommunications Law and Copyright Law. In addition, Professor Wu and Shaye Professor Clarisa Long will introduce a new colloquium on Intellectual

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Spotlight: Art, Cultural Heritage and the Law

A seminar on "Art, Cultural Heritage and the Law," offered for the first time this spring by Jane Levine, received an enthusiastic response from students. The timely seminar explored laws regulating the art and antiquities market and the legal obligations of museums, art dealers and auctioneers; the legal ramifications when works of art and cultural heritage turn out to be forgeries; recovery of stolen art works; and treatment of art and objects of cultural heritage in the international context.

The seminar also addressed special issues relevant to looting and theft of art works in wartime, using World War II and the Iraq War as examples. Cultural heritage of indigenous people was another area of focus, as the students considered the problems of looting and theft from Native American sites in the United States and the effect of the Native American Graves Protection Act.

Ms. Levine, an Assistant U.S. attorney in the Southern District of New York, taught the seminar. As the Art Fraud Coordinator and Special Trial Attorney for the FBI Art Crime Team, she has had extensive experience overseeing national and international cases involving crimes related to art and cultural heritage. Ms. Levine is a graduate of Brown University and New York University School of Law. She will leave her job at the U.S. Attorney's office in September to become Senior Vice President and Worldwide Director of Compliance for Sotheby's.

Invitation: "Constitutional Challenges to Copyright"

Please join us for an all-day symposium on "Constitutional Challenges to Copyright" on Friday, October 27, 2006.

The past few years have seen constitutional challenges to the 1976 Copyright Act and to almost every major copyright law enacted since then. Some of those challenges are still pending. Why has there been such an upswing in constitutional litigation? What are the merits of these suits, and how have the courts dealt with them? What are the potential implications of a successful suit?

Our symposium will explore the sources and limitations of Congress's power to enact copyright and copyright-related laws, the merits of these constitutional challenges, and the courts' responses so far. Panelists will discuss and debate:

- * Congress's power to enact copyright laws, and limitations on that power inherent in the Copyright Clause
- * Alternatives to the Copyright Power: The relationship of the Copyright Clause to the Commerce Clause and the Treaty Power
- * Copyright and Freedom of Expression

Marybeth Peters, U.S. Register of Copyrights, will present the keynote address, and the panel discussions will feature many of the nation's leading professors. CLE credit will be available. For more information, and to register, go to http://www.law.columbia.edu/center_program/kernochan/symposium102706 or call Teresa Chang at Columbia Law School, (212) 854-6278.

New Books of Interest

Who Controls the Internet: Illusions of a Borderless World (Oxford University Press 2006), by Professor Jack Goldsmith of Harvard Law School and Professor Tim Wu of Columbia Law School, explores the challenges the Internet has posed to national governments (and, conversely, the challenges that national governments have posed to the Internet), and questions whether the Internet is erasing national borders.

Art and Cultural Heritage: Law, Policy and Practice (Cambridge University Press 2006), edited by Barbara T. Hoffman '71, addresses a range of issues that affect cultural property, including the illicit international art market, developing conservation strategies for national heritage areas, traditional knowledge, mediation and arbitration of art and cultural property disputes, and the role of museums as stewards of cultural property.

Professor Tim Wu Welcomed

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Property, in which students will meet weekly to discuss and critique papers by guest presenters drawn from law, economics, business and other academic disciplines.



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 COLUMBIA LAW SCHOOL
 435 WEST 116TH STREET, BOX A-17
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 PHONE: (212) 854-7424
 FAX: (212) 854-9111

Author Nick Taylor Delivers the 2006 Manges Lecture

On April 4, 2006, Nick Taylor, immediate past President of the Authors Guild, delivered the nineteenth Horace S. Manges Lecture, titled “The Prospects for Copyright in a Bookless World.” Mr. Taylor is the author of ten nonfiction books, including a best-selling biography of John Glenn, and has written on a diverse range of topics, including tournament bass fishing, the Mafia, and a history of the laser. In his capacity as President of the Authors Guild, he led the organization in filing suit to enjoin Google’s Book Search Project in the fall of 2005.

“No one is more affected by copyright than writers,” said Mr. Taylor as he opened his lecture. Copyright, he said, is undergoing a period of rapid change. Such change could potentially lead to a “golden age of copyright.” But he expressed apprehension that it might alternatively lead to a diminution of authors’ rights, observing that criticism of copyright will probably intensify. “The book as we know it is not long for this world,” he said. “Despite the halting progress of the ebook, the day will come when it’s the rule, not the exception.” And as more works are made electronically available, fragments of books—chapters and even individual pages—are becoming independent sources of economic value. The challenge for authors is to continue to find ways to earn a livelihood writing in this new environment.

Mr. Taylor observed that one of the problems with the emerging copyright landscape is that consumers often believe that they should not have to pay for non-physical works. For instance, many people who would never think of stealing a compact disc from a record store have few reservations about downloading that same music without paying for it. Consumers seem to forget that the true value of a copyrighted work is in the “content removed from the tactile container.” This problem has plagued certain industries for years, but is only beginning to affect authors, Mr. Taylor noted. He said that as authors seek solutions to the problem, they should “avoid at all costs the kinds of heavy-handed enforcement that our colleagues in music and movies have found it necessary to resort

to. What a debacle it is to sue your own fans.”

That said, however, Mr. Taylor vehemently rejected the idea that authors should sit passively as online sources (most notably Google) develop new ways to exploit authors’ works, often without remuneration to or permission from the author. He disputed the claim often made by “copyright libertarians,” and echoed by a few of his own colleagues, that exposure is a more important goal for authors than royalties, and that authors should therefore welcome unauthorized digitization of their works. More so than in other industries, he argued, authors rely on royalties for their livelihoods. “It’s hard to compare an author to a touring rock band,” he said. “I can’t think of a single author who can get anybody to buy a tie-dyed tee shirt. And not that many can keep the turnstiles rolling long enough to fill a lecture hall with paid admissions, let alone a concert auditorium.”

Mr. Taylor hastened to add that search initiatives like Google’s Library Project have tremendous positive potential. He expressed agreement with the proposition that “books unexposed to searches on the internet will wither and die.” But he rejected the idea that Google should be able to proceed with its project without permission from authors. “The point of the Authors Guild’s lawsuit against Google was not to stop the project,” he said. “The point was to share, as copyright intends. . . . The power to say ‘no, not without my permission’ is the only way authors get paid.”

Mr. Taylor shared his own vision for a book search service—one that permits access not only to Google-type “snippets,” but also to whole paragraphs, pages, chapters and even entire works, depending on the consent of the author. Much like Lexis or Westlaw, such a service could charge users on either a monthly or à la carte basis. Authors would be compensated through an ASCAP-type society, which would apportion royalties based on usage. He expressed optimism that such a system could easily be made to work: “New payment models are proliferating, and they recognize the role of content creators and rights holders.”

The lecture concluded with a call to action. “Most authors want and need to get paid for their work. We reject the implication that creativity is supposed to occur outside the context of money to support it. We also reject the accusation that we’re standing in the way of progress.” Mr. Taylor noted that Google is heavily lobbying Congress for changes to copyright law, and stated that authors must therefore be energetic about safeguarding their rights. “We have to be prepared to fight. Not fight the open internet, or its promise of revolutionizing the distribution of knowledge, but fight to preserve the rights of creators as an integral part of that admirable vision.” Ultimately, said Mr. Taylor, “[t]he true test of the future, whether it be a book-filled or bookless world, will be to preserve the role of creator, in both the public imagination, and in the language of the law.”



2006 Manges Lecturer, Nick Taylor

Katherine Kaufmann Shih '06

COLUMBIA UNIVERSITY SCHOOL OF LAW
KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS
435 WEST 116TH STREET, BOX A-17
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maine, led the first panel, "Sweet Charity: Not-For-Profit Theater," which featured composer, lyricist and librettist Michael John LaChiusa; attorney Deb Hartnett LLM '95, Counsel at Paul, Weiss, Rifkind, Wharton & Garrison, and Professor Peter Swords, '62. Panelists discussed the charitable purpose requirement of not-for-profit status and the risks of collaborating with commercial theater. Mr. LaChiusa also discussed nonprofit theater's role in nurturing artists.

In the second panel, "Money Makes the World Go 'Round: The Economics of Commercial Theater," Jason M. Cooper, '02, an associate at Paul, Weiss, led a discussion about who makes money on Broadway, and how, with producer James Freyberg; Bob Bucci of The Marketing Group and Aaron Lustbader of Alan Wasser Associates. Panelists walked students through the process of raising capital, recouping costs and distributing royalties to investors and creative participants in a show.

Discussion became heated during a panel on copyright issues entitled "What Permission? A Practitioner's Guide to Copyright Licensing in Theater" when John Weidman, President of the Dramatists Guild of America, faced off on the issue of directors' IP rights with Ronald Shechtman, Partner at Pryor Cashman Sherman & Flynn, who represents the Society of Stage Directors & Choreographers. This panel also featured Richard M. Ticktin, Partner at Robinson Brog and S. Jean Ward, Counsel at Frankfurt Kurnit, and was moderated by Freddie Gershon, '64, Chairman/CEO of Music Theater Interna-

tional, which licenses secondary rights to musicals for stage use.

Steven Chaikelson, '93, who chairs the Theatre Division of the Columbia School of the Arts and teaches the Seminar in Law and Theater, moderated the day's final panel, "From Screen to Stage (And Back Again): Hollywood's Impact on Broadway." Panelists discussed the legal, business and artistic implications of the trend of bringing Hollywood properties to the Broadway stage, especially as musicals. Michael Lynne, '64, Co-Chairman and Co-CEO of New Line Cinema, and Mark Kaufman, New Line's Executive VP of Production and Theater, spoke about their experiences with the film studio that produced a Tony-award winning musical (*Hairspray*) and has other Broadway projects in the works (*The Wedding Singer*). The panel also included attorney Elliot H. Brown, Partner at Franklin Weinrib; producers Barbara Whitman and Margo Lion, and composer Jeanine Tesori, who jokingly described herself as the "token artist" in the group.

The event attracted students from Columbia and other area law schools as well as students from Columbia's Business School and School of the Arts. Also in attendance were several artists, executives and attorneys from production companies and from key organizations such as Actors' Equity Association and the Dramatists Guild of America.

Additional support for the event was provided by the Columbia Law School Entertainment, Arts and Sports Law Society and the Theatre Division of the Columbia University School of the Arts. Paul, Weiss, Rifkind, Wharton & Garrison sponsored a networking luncheon for attendees. Transcripts of the keynote address and all four panel discussions will be published in an upcoming edition of the *Columbia Journal of Law and the Arts*.
Sidne Koenigsberg '06