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KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS

Spring 2015

R. ANTHONY REESE DELIVERS 28TH ANNUAL MANGES LECTURE



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R. Anthony Reese spoke about "Optional Copyright Renewal? Lessons for Designing Copyright Systems" at the Manges Lecture on February 23, 2015

R. Anthony Reese, Chancellor's Professor of Law at the University of California at Irvine, delivered the 28th Horace S. Manges Lecture on Monday, February 23.

In an innovative and status-quo challenging lecture, Reese presented the advantages and disadvantages, as well as the feasibility, of a copyright system with an opt-in renewal provision.

He noted that such a change would be difficult to draft, but that real copyright reform mandated these challenging discussions. Under Reese's proposal authors could choose either a traditional registration term or a shortened term with the option to renew. The benefits and drawbacks of such a regime were closely examined in the hour-long talk.

Reese saw many benefits to a renewal term. He suggested it would allow us to measure the value of a work in the eyes of the creator and, in the long term, in the eyes of the public. But the concept of renewal is not without its problems. Most notably, as a signatory of the Berne and TRIPS

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THE KERNOCHAN CENTER'S NEWEST IP FELLOW BART SZEWCZYK

Last fall, the Kernochan Center welcomed Bart Szweczyk (pronounced SHEF-chick) as the newest Intellectual Property Fellow. Szweczyk received his J.D. from the Yale Law School and his Ph.D. in international relations from Cambridge, where he studied as a Gates Scholar.

He also attended the Wharton School at the University of Pennsylvania, where he received a B.S. in economics, *summa cum laude*, and the Woodrow Wilson School at Princeton University, where he received a master's in public affairs.

Szweczyk started his career as an associate at Wilmer Cutler Pickering Hale & Dorr LLP. He then clerked for Judge Leonard I. Garth at the U.S. Court of Appeals for the Third Circuit.

He also clerked at the International Court of Justice in The Hague for Judge Christopher Greenwood and Judge Peter Tomka.

Prior to the Kernochan Fellowship, Szweczyk spent two years as an Associate-in-Law working on international economic law.

Szweczyk's current research focuses on the intersection of international law and intellectual property.

He is studying the impact of multi-lateral trade agreements on intellectual property laws and enforcement. And this spring, he taught International Copyright with Jane Ginsburg.

"In the digital age, copyright is a quintessentially transnational field," Szweczyk explained.

"It is crucial to understand the interactions of international law and domestic law in this area. Jane Ginsburg's International Copyright casebook, co-authored with Édouard Treppoz, is an invaluable resource in this endeavor, as it is the first casebook that brings together U.S. and E.U. approaches to copyright. "It has



Bart Szweczyk

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Agreements, the United States cannot allow the term of copyright to be divided, nor can the government require registration in order to effect renewal rights.

Thus, any renewal term must be optional, and when an author or authors would have to execute that option was also open to discussion. Reese suggested that there could be incentives to choose this option in order to urge people to opt-in. But Reese was concerned that perhaps any benefits given to those who register for this renewal term would mean fewer benefits and incentives for those who register but choose not to opt in.



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R. Anthony Reese delivers his lecture to members of the Columbia Law School community

One issue that Reese addressed was who would have the right to choose this bifurcated-term option? What if an author died before she had the opportunity to do so? Would her heirs inherit this right? Under the requirements of Berne, each author of a jointly authored work would have to choose to participate in order for the choice to take effect.

Another question posed “when would authors opt in”? Within five years of creation? At first dissemination? At publication? What about works that are never published? These issues could create situations where courts must resolve factual disputes long after the option is chosen. As with who could choose to opt-in, questions of “Who can renew?” would certainly arise. Could authors’ heirs renew a copyright? What if there were multiple heirs, or even no heirs, or what if the author died intestate?

In conclusion, Reese acknowledged he posed more questions than answers, and noted that there will have to be tradeoffs in any new Copyright Act and his optional renewal was just one example. One of the largest issues that the drafters will have to confront is how to make the Act work not only for the many different types of creative works it covers, but also the different transactions authors and licensees enter into in the marketplace, Reese said.

The entire Manges lecture is currently available on the Kernochan Center website at <http://web.law.columbia.edu/kernochan/events/past-events/manges> and will be published in an upcoming volume of the COLUMBIA JOURNAL OF LAW & THE ARTS.

KERNOCHAN CENTER SPRING IP SPEAKER SERIES BEGAN FEBRUARY 3

Jay Dougherty '81, professor at Loyola Law School in Los Angeles, and Washington D.C.-based attorney Jonathan Band kicked off the Center’s annual Spring IP Series on February 3 to a full room of students, faculty, and staff.

The topic was the controversial *Garcia v. Google* case in which an actress claimed her own copyright in her performance in an independent film. Actress Cindy Lee Garcia was hired to portray one role, but her performance was edited, dubbed and made part of a movie critical of Islam.

When the film was posted on YouTube, which is owned by Google, Garcia began receiving death threats and she sought to have YouTube remove or block access to the film. Dougherty and Band discussed why Garcia couldn’t get the film removed under the DMCA and, thus, why her only option was to sue for copyright infringement of her performance.

The District Court held that she had given an implied license when she agreed to act in the film, but the 9th Circuit reversed and granted a preliminary injunction. Dougherty believes the 9th Circuit was correct in its decision, as the actress had made at least a minimally creative contribution to the finished project and was never asked to assign her rights

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Michael Elkin, Winston & Strawn LLP

KERNOCHAN CENTER SPRING IP SPEAKER SERIES BEGAN FEBRUARY 3

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under a work-for-hire or union agreement.

Band disagreed, saying that any contribution she made was too minimal to deserve an independent copyright in the entire film, and a preliminary injunction was not only an overbroad remedy, but one that was of little good given the other media outlets that could still air the video.

On February 10, Michael Elkin of Winston & Strawn LLP and NBC Universal's Daniel Kummer discussed last year's Supreme Court decision in *American Broadcasting Companies, Inc. v. Aereo, Inc.*, which led to the shutdown of that provider's system.



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Daniel Kummer, NBCUniversal Media, LLC

Elkin criticized the Court for a decision that he said "settled a dispute, but didn't promulgate standards." He said that the decision did not recognize "that folks had a right to free access to broadcast signals" and that it should not matter where the antenna that picks up those signals is located.

Kummer disagreed, saying that the Court's ruling determined that whether a performance is public or not can turn on the relationship between the recipient and the work.

The following week, Kernochan Center IP Fellow Brad Greenberg and Public Knowledge's Sherwin Siy debated the

role news aggregators play in the future of the hot-news business.

While acknowledging that aggregators were not to blame for traditional media's falling revenue streams, Greenberg expressed concern that websites that display headlines and snippets of news stories taken from primary content sites will have potentially devastating effects on the ability of news-gathering institutions to survive.

Greenberg proffered a few ideas that might prevent this from occurring, such as narrowing the fair use doctrine as it pertains to "hot" news; creating a new doctrine that would allow news gathering sources to protect ideas and expression for a short period of time; and providing direct or indirect incentives to primary news organizations.

Siy countered that perhaps these news gathering organizations are not in the best position to monetize the material they produce. Furthermore, he argued, just because the newspapers can copyright the material they publish, they do not have an exclusive right to make money from its dissemination.

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been a real pleasure and privilege to be able to teach the course with Jane this past semester,” Szewczyk added. He viewed the Kernochan Center Fellowship as a unique opportunity to expand his prior scholarship on international law to intellectual property. “With Jane, June, and Pippa, the Kernochan Center is a wonderful place to generate and test new research ideas in the areas of copyright and intellectual property,” Szewczyk said. “And there is great camaraderie within the team, which makes the experience all that much more enjoyable.”

In his spare time, Szewczyk enjoys traveling, playing

sports, and reading history and biographies. He is an active term member of the Council on Foreign Relations and has served on the Executive Council of the American Society of International Law.

In 2013, Szewczyk was selected as one of the Top 99 Under 33 Foreign Policy Leaders by the Young Professionals in Foreign Policy and the Diplomatic Courier.

Szewczyk was born in Warsaw, Poland and grew up in New Jersey on the Hudson River right opposite the 79th Street Boat Basin.

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