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Kernochan Center for Law, Media and the Arts

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News From the Kernochan Center Spring 2021

August 16, 2021

JOIN THE KERNOCHAN CENTER'S JANE GINSBURG AND PIPPA LOENGARD FOR AN IP PANEL

The Kernochan Center invites you to the Class of 1986 "Toaster Talk" on Wednesday, March 24th at 4PM EDT. The topic is: "[Protecting the Rights of Authors and Artists: New Perspectives on Intellectual Property Law.](#)"

The panel will be held on Zoom. Other panel members include [Cheryl Davis '86](#), General Counsel for the Authors' Guild, and [Scott Martin '86](#), Deputy General Counsel, EVP, Paramount Pictures. The panel will be moderated by [Heather Dembert Rafter '86](#).

To register, [click here](#).

SPRING SPEAKER SERIES BEGINS

The Spring IP Speaker Series has been held remotely this year, but has still proceeded robustly.

The series kicked off on January 26 when [James Grimmelman](#), Tessler Family Professor of Digital and Information Law at Cornell Tech and Cornell Law School, and [Annemarie Bridy](#), Copyright Counsel at Google, discussed the copyrightability of works created by artificial intelligence (AI). Ms. Bridy noted Google's official position that works generated solely by machines without human input should not be copyrightable. Ms. Bridy mentioned two new programs that are designed to turn user-uploaded images into works that have the characteristics (such as brush strokes or shading) of fine art. It is these developments, where AI works have many of the attributes of human expression but have no human authorship that present the toughest issues of copyrightability. These works should not be eligible for protection if we are primarily worried about displacing human-authored creations. Grimmelman countered that there is no such thing as non-human authored AI works and that there is not a clear distinction between computer-generated and human-authored works. He argued that while sonatas may be written with the aid of a computer program, the creation is still designed by a human. Even works that are generated by a computer are more comparable with derivative works than non-copyrightable unauthored works. He did concede that AI-authored works may occur in the future, and that it is worth continuing this discussion so we make sure the right decisions are made.

The second lunch featured [Catherine Gellis](#) and [Professor Mary Anne Franks](#) of the University of Miami School of Law speaking on Section 230 of the Communications Decency Act (CDA). Professor Franks began by noting that when the CDA was adopted in 1996, Congress was concerned that asking websites to be liable for the postings of users would create a chilling effect that could stunt the growth of the world wide web. But she also noted that in 2021, there is a proliferation of hate speech and harassing speech on the internet, and Congress must do something to protect not only the targets of such speech, but also the greater community. She questioned why bartenders can be liable for overserving customers and schools and businesses have an affirmative duty to stop harassment, but websites have a free pass on policing their users. She proposed that there need to be consequences for failing to remove hate and harassing speech, arguing that subsection (c)(2)(A) provides protection for those who, acting in good faith, remove or restrict access to speech potentially protected by the First Amendment. Ms Gellis, an attorney in private practice, disagreed, saying that section 230 is necessary to protect internet platforms from wrongful lawsuits, and that without it there would be a sharp reduction in internet dialogue. In addition, Gellis argued that the limitations on section 230 allow for the removal of any speech that violates the law (such as child pornography). She countered Professor Frank's praise of subsection (c)(2)(A) saying that any risk of liability is too much for websites to bear and often forces innocent parties to shut down lawful speech for fear of being sued. For video of this talk, please [click here](#).

UPCOMING SPRING TALKS

Recent Developments in Fair Use

Speakers: Joseph C. Gratz, Durie Tangri, and Dale Cendali, Kirkland and Ellis

Tuesday, March 23 at 12:15PM EDT

To register, [click here](#).

Text and Data Mining

Speakers: Nancy Kopans, vice president and general counsel, ITHAKA, and Nathan Kelber, Mike Ilitch School of Business, Wayne State University and Community Engagement Lead, JSTOR Labs.

Tuesday, March 30 at 12:15PM EDT

To register, [click here](#).

DMCA Section 512

Speakers: Kimberly Isbell, U.S. Copyright Office and Brad Greenberg, Council-Detailee, U.S. Copyright Office to the Senate Judiciary Committee)

Tuesday, April 6 at 12:15PM EDT

To register, [click here](#).

Nazi-Looted Art

Speaker: Nick O'Donnell, Sullivan and Worcester

Thursday, April 8, at 12:05PM EDT

To register, [click here](#).

KARYN TEMPLE '97 DELIVERS 33RD ANNUAL HORACE S. MANGES LECTURE

The thirty-third annual Horace S. Manges Lecture, entitled, "Beyond Whack-a-Mole: Content Protection in the Age of Platform Accountability," was delivered on Monday, March 15 by Karyn Temple '97, the Global General Counsel of the Motion Picture Association of America and former Register of Copyrights. Ms. Temple spoke in her personal capacity. More details will be available in our next newsletter.