

**SYMPOSIUM: INTERDISCIPLINARY  
CONFERENCE ON THE IMPACT OF  
TECHNOLOGICAL CHANGE ON THE  
CREATION, DISSEMINATION, AND  
PROTECTION OF INTELLECTUAL  
PROPERTY**

SELECTIONS FROM THE 2007 ALBANY LAW SCHOOL  
INTERDISCIPLINARY CONFERENCE ON THE IMPACT OF  
TECHNOLOGICAL CHANGE ON THE CREATION,  
DISSEMINATION, AND PROTECTION OF INTELLECTUAL  
PROPERTY

*Sheldon W. Halpern\**

In 2000, the National Research Council published *THE DIGITAL DILEMMA*,<sup>1</sup> a report on the complex challenge to established norms created by the radical growth in information technology. As the report notes, “many of the intellectual property rules and practices that evolved in the world of physical artifacts do not work well in the digital environment . . . .”<sup>2</sup> If, as I believe, the law of copyright creates the infrastructure for our culture, the way in which that law responds to this challenge has profound implications for that culture.

On the assumption that the most productive way to respond to the challenge is to examine it from different perspectives and interests, a diverse array of distinguished individuals from a variety of fields have periodically come together to discuss the multi-disciplinary effect of the interface of law and digital communication

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\* Harold R. Tyler, Jr., Chair in Law and Technology, Albany Law School.

<sup>1</sup> NATIONAL RESEARCH COUNCIL, COMMITTEE ON INTELLECTUAL PROPERTY RIGHTS AND THE EMERGING INFORMATION INFRASTRUCTURE, *THE DIGITAL DILEMMA: INTELLECTUAL PROPERTY IN THE INFORMATION AGE* (National Academy Press 2000).

<sup>2</sup> *Id.* at ix.

technology on the creation, dissemination, and protection of intellectual property. The first two such interdisciplinary exploration took place at The Moritz College of Law at The Ohio State University in February 2000 (and the papers presented were published in the Ohio State Law Journal<sup>3</sup>) and in March, 2001 (and the principal papers presented there were published in the Journal of the Copyright Society of the United State of America<sup>4</sup>).

The exploration continued in October, 2006 in New York City, under the auspices of Albany Law School. These conferences were designed to facilitate rich and candid interchange. To that end, the format was one of “total immersion,” a continuing plenary session in which, although divided for convenience into sequentially scheduled “panels” of speakers and commentators, all of the more than thirty participants were each fully participating in all of the sessions.

The 2006 Conference panels (selections from which follow) were spread over three days. Responding to the continually changing environment, and, more particularly to the greater need for understanding these issues in an international and a trans-national context, the participants examined:

*The Normative Role of Copyright Law: Rethinking the Purpose of Copyright Law in Light of Technological Change*—The presenters and panelists considered the fundamental basis for protection and the way in which the problem of dissonance between observed behavior and the laws protecting intellectual property may be ameliorated.

*Globalization and Harmonization*—This discussion focused on how we are to fit what had been traditional “territorial” constructs of intellectual property law into the reality of an electronically borderless world.

*Beyond Berne: Toward Formulation of General Principles of Protection and Permissible Use*—An inquiry into whether, on the one hand, the United States system of exemption, with its broad and controversial doctrine of fair use, can provide a universal model of permissible use and, on the other hand, whether such a “safety valve” must generally be abandoned in favor of more detailed, specific, and generally accepted statutory exemptions. Such inquiry raises issues of alternative devices, such as expanded compulsory licenses, and the related problems of valuation of intellectual property.

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<sup>3</sup> 62 OHIO STATE L.J. 569–971 (2001).

<sup>4</sup> 49 J. COPYRIGHT SOC. U.S.A. 127–385 (2001).

*Moral Right, Right of Publicity, and Performers' Rights*—This discussion considered the array of “neighboring rights” affected by changes in digital technology and by differing national treatment.

*Implementing Change*—The proceeding concluded with an attempt to find and articulate consensus to effect meaningful change and to build on the interdisciplinary dialogue fostered by the Conference.

Albany Law School dedicated this Conference to the memory of the late Judge Harold R. Tyler, Jr., a distinguished judge and lawyer (whose remarkable career is captured in the dedicatory note that follows) very much concerned with the law’s interaction with technological development and change. It was therefore particularly fitting that these proceedings, departing from the polarization and conflict that has marked much of the commentary in this field in recent years, fostered lively, intense, serious, humorous, but always civil and open-minded interdisciplinary discourse.

The papers that follow give a sense of the tone and nature of the Conference. Of course, they cannot capture the spirit and life of the ongoing commentary and discussion—the give and take built on a shared vision by a dedicated group of people seeking to find effective ways to deal with the continuing “digital dilemma.”

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OCTOBER 26–28, 2006

CONFERENCE SPEAKERS

**Jonathan Band**, Jonathan Band, PLLC, Washington, DC  
**Paula Baron**, Prof., Victoria University, Wellington, New Zealand  
**Ann Bartow**, Prof., University of South Carolina School of Law  
**Jon Baumgarten**, Partner, Proskauer, Rose, Washington, DC  
**Andrew Bridges**, Partner, Winston & Strawn, San Francisco  
**Michael Carroll**, Prof., Villanova University School of Law  
**Kenneth Crews**, Samuel Rosen Prof. of Law, Indiana Univ. School of Law-Indianapolis  
**Katrin Cutbush-Sabine**, Prof., Faculty of Law, University of Technology, Sydney, Australia  
**Randall Davis**, Prof., Massachusetts Institute of Technology  
**Laura Gasaway**, Associate Dean for Academic Affairs & Professor of Law, School of Law, University of North Carolina  
**James Gathii**, Gov. George E. Pataki Professor of International Commercial Law, Albany Law School  
**Andres Guadamuz**, AHRC Research Centre for Intellectual Property and Technology Law, Edinburgh  
**Alice Haemmerli**, Columbia University  
**Peter Halewood**, Prof., Albany Law School  
**Robert Hamilton**, Of Counsel, Jones Day, Columbus  
**Amalyah Keshet**, Head, Image Resources & Copyright Management, Israel Museum, Jerusalem  
**Mark Kornbluh**, Director, MATRIX, Michigan State University  
**Roberta Rosenthal Kwall**, P. Niro Prof. of Intellectual Property Law and Dir. Emeritus, DePaul College of Law Center for Intellectual Property and Information Technology  
**David Lange**, Prof., Duke University School of Law  
**Marshall Leaffer**, Distinguished Scholar, Intellectual Property Law, Indiana U. School of Law-Bloomington  
**Paul A. Leonard**, Director, Intellectual Property Institute, London  
**Silke von Lewinski**, Doctor at Law, Max Planck Institute for Intellectual Property, Munich; Adjunct Prof., Franklin Pierce Law Center

2007]

Symposium Introduction

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**Doris Estelle Long**, Prof., John Marshall Law School

**Samuel Murumba**, Prof., Brooklyn Law School

**Miriam M. Nisbet**, Legislative Counsel, American Library Association

**Ruth Gana Okediji**, William Prosser Prof. of Law, University of Minnesota Law School

**Hon. Marybeth Peters**, Register of Copyrights of the United States

**Gloria C. Phares**, Partner, Patterson, Belknap, Webb, & Tyler, New York

**Jerome H. Reichman**, Bunyon S. Womble Prof., Duke University School of Law

**Dorit Samuel**, Consultant, Visiting Professor, Albany Law School and Rutgers-Camden School of Law

**David Shipley**, Thomas R.R. Cobb Professor, University of Georgia Law School

**Bernard R. Sorkin**, Senior Counsel, Time Warner, Inc,

**Beverly Wolff**, International Foundation for Art Research; former general counsel, Museum of Modern Art, New York

**Martha Woodmansee**, Prof., Case Western

**Alfred C. Yen**, Prof. & Director, Emerging Enterprises & Business Law, Boston College Law School

**Diane Leenheer Zimmerman**, Samuel Tilden Professor, New York University School of Law

Conference Director:

**Sheldon W. Halpern**, Harold R. Tyler Chair in Law & Technology, Albany Law School