



Copyright & Creativity
Perspectives on Originality, Authorship, and Expression

Friday, January 27, 2012, free and open to the public

- 8:30 a.m.-9:00 a.m. Continental breakfast in the North Lobby
- 9:00 a.m.-9:15 a.m. Opening Remarks, Flynn Auditorium
- 9:15 a.m.-10:30 a.m. "Perspectives on Authorship & Originality"
 - Professor Reese
 - Professor Lee
- 10:30 a.m.-10:35 a.m. Break
- 10:35 a.m.-11:50 a.m. "Considering Copyrightability"
 - Professor Kwall
 - Professor Grimmelman
- 11:50 a.m.-1:00 p.m. Lunch in the North Lobby
- 1:00 p.m.-2:15 p.m. "The Author Figure"
 - Professor Chon
 - Professor Ochoa
- 2:15 p.m.-2:20 p.m. Break
- 2:20 p.m.-3:35 p.m. "The Creative Process"
 - Professor Carroll
 - Professor Tehranian
- 3:35 p.m.-5:00 p.m. Reception in the North Lobby

Professor Reese

The 1976 Copyright Act grants copyright protection to "works of authorship." Although Congress did not define that term in the statute, the Act's legislative history gives some guidance as to what Congress meant by the phrase. Although this aspect of the statutory language has not gotten much attention over the last 30 years, this paper considers whether an understanding of what constitutes a "work of authorship" in the statutory sense might help resolve claims of copyright protection in unusual types of allegedly copyrightable subject matter.

Professor Lee, "Digital Originality"

Increasingly, creations from new digital technologies raise confounding questions of originality, making problematic the notions of both "independent creation" and a "modicum of creativity." Put simply, our traditional notions of authorship are strained when machines do much, if not all, of the creating. This article discusses the challenges to originality posed by digital technologies and proposes a more fully articulated test of originality under the doctrine of *digital originality*.

Professor Kwall, "The Lessons of Living Gardens and Jewish Process Theology for Authorship and Moral Rights"

This Article relies on *Kelley v. Chicago Park District*, a recent Seventh Circuit decision, as a springboard to discuss certain critical issues of copyright law and policy that, until this case, have largely been overlooked in the discourse. The type of work at issue in *Kelley* is an example of a growing subset of Conceptual art that is composed of plants, and their soil rather than conventional mediums such as canvas and paint. The particular focus in this Article is on Jewish Process Theology, an area that has not been explored in the legal literature in connection with human creativity. This Article draws from the Jewish tradition's version of Process Thought to inform our copyright policy concerning how we define eligible works of authorship and determine their appropriate scope of protection.

Professor Grimmelmann, "Three Theories of Ratings"

This is an article about what relationship ratings bear to reality. It is also an article about whether they are copyrightable – for the law's response to ratings turns on what it thinks they are. Sometimes the law treats ratings as statements of fact, which are either true about the world or false. Sometimes it treats them as creative opinions, which bear no necessary relationship to the world. And sometimes it treats them as self-fulfilling prophecies, which remake the world in their own image. Each explains something important about ratings; each provides useful guidance about how courts should treat them. But each is incomplete by itself; indeed, they typically give conflicting advice. To make sense of the ratings caselaw, we must also make sense of how these theories push and pull on courts' intuitions about ratings.

Professor Chon, "The Romantic (Collective) Author"

The critique of the romantic individual author made by copyright scholars twenty years ago can be extended to the collective authorship practices facilitated by digital technologies. This paper will see where the original critique may illuminate the current mythologies surrounding the emerging figure of the collective author.

Professor Ochoa, "Who Owns an Avatar? Copyright, Creativity, and Virtual Worlds"

The Copyright Act envisions several types of collaborative authorship, including joint authorship, works made for hire, and collective works. None of these models, however, provides a good fit for interactive entertainment, such as multi-player online role-playing games, in which players create their own avatars and interact with other players in unscripted ways. Here, the two theories underlying copyright law diverge: incentive theory suggests that game providers are best situated to license games (including avatars) for other uses, while natural right theory suggests that players deserve to be compensated

for their contributions to the game by creating their own avatars.

Professor Carroll

The creative process, however conceived, requires that creative individual(s) have access to preexisting creative works. This is how cultures are built and sustained; this is one of the fundamental arguments for copyright's public domain. The need for access is particularly acute in the performing arts because a range of creators are dependent on access to source material. This paper examines and questions copyright's hierarchical relationship between those who compose source material and those who render this material in performance and considers whether those dependent on source material should be afforded a right of access through statutory licensing or otherwise.

Professor Tehranian, "The Fairest of Them All: Fair Use and the Myth of Aesthetic Neutrality"

This article examines how subtle aesthetic considerations in the fair use calculus impact the ranges of permissible creative remixes and reinterpretations we get of canonical works and how aesthetic considerations help consecrate cultural meaning and epistemological narratives.