

## Copyright Clearance Center's First OnCopyright Seminar Addresses Complex Questions

Does copyright law need to be fixed? That was the question Villanova University's Michael Carroll bluntly put forth during the "law" panel at the Copyright Clearance Center's (CCC) first-ever OnCopyright conference, held at the Union League Club in New York City last Thursday. Billed as a "conversation about where copyright is headed," the day-long event brought together an outstanding array of panelists to address copyright concerns in four areas: technology, society, law, and art. Nevertheless, when Carroll attempted to pin down his panelists on whether copyright needed a top-to-bottom overhaul, the panelists hedged, although copyright attorney Paul Fakler seemed inclined to answer yes.

"But as soon as I say that, it makes me nervous," he said. "Because, who's going to do it?" Fakler said he was concerned that copyright advocates today had become too polemical, with "piracy and theft" on one side of the debate and "information wants to be free" on the other. "That's not going to forge a solution," he said. True to Fakler's observation, the law panel later led to the most heated exchange of the day when Association of American Publishers (AAP) lawyer Allan Adler reiterated publisher's claims lodged in its lawsuit against Google over the company's library scan plan. Google, Adler said, was in essence creating a valuable asset by illegally copying library books without permission. He was quickly rebuffed, however, by University of Virginia law professor Chris Sprigman, who said Google was not competing in "book provision" and that the scanning effort was transformative—to create an online index—something that offered significant public benefit. He suggested publishers were seeking little more than a "hold-up" payment from Google.

That exchange reflected the simmering tension introduced in the copyright realm by new technology, a tension explored in the day's first panel, moderated by Sprigman; and featuring Kevin O'Kane,

founder of "online content syndicator" for bloggers; Red Lasso, and Clay Shirky, author of *Here Comes Everybody*. O'Kane discussed his nascent service, where users can find and freely link to clips from television and radio broadcasts—seeming to acknowledge the service may seem to take liberties with traditional notions of copyright law. He suggested, however, there was an innovate-first-ask-the-copyright-questions later aspect to its development, noting that useful services like Red Lasso would be impossible to launch otherwise. Shirky, meanwhile, pointed to the example of Napster, the pioneering peer-to-peer music-sharing network sued out of business in 2001 but not before it forever changed an industry. "Napster shows you can shut down software but not ideas," he said.

In the "society" panel, Columbia University law professor Tim Wu used the example of Harry Potter creator J.K. Rowling's current copyright infringement case against Steve Vander Ark, creator of *The Harry Potter Lexicon*, a web-based encyclopedia set to be published as a book, and a fan site dedicated to the TV series *Lost* as examples of copyright law clashing with societal values. Although the verdict in the Rowling/Vander Ark suit has yet to come down from the court, the verdict among fans has, Wu noted: Vander Ark has been cast out by the Potter fandom for breaching the trust of Potter creator Rowling. Even if the court finds Vander Ark's use allowable, the panel noted, Potter fans have been critical and are refusing to embrace his work out of concern that offending Rowling, the creator, could jeopardize future derivative works.

In pointing to a fan wiki devoted to the TV show *Lost* online, Wu noted that the site contained a number of "clearly infringing" aspects, including transcripts of each episode. Rather than sue the site, however, ABC, which airs the show, has even advertised on it occasionally. On the law panel, Viacom attorney Stanley Pierre-Louis noted there was indeed a fine line

between "infringement" on one hand and "marketing" on the other, adding that a transcript was not likely a substitute for watching the show.

Public Knowledge's Gigi Sohn told conference goers that copyright law needs to accommodate the creation of such derivative works. She noted that Rowling embraced Vander Ark at one point—when his project was just online—but now seems most offended, as the project is set to become a book, that he simply didn't do a very good job. "But artists," she noted, "don't have moral rights. If they did, derivative works wouldn't be made." That point was echoed in the final session on "art," by *Motherless Brooklyn* author Jonathan Lethem. "When you talk to artists about their lives and points of origin, it is almost always a process that includes enormous acts of imitation, appropriation," he said. "Artmaking is fundamentally a language. Nothing comes from nowhere...art is made of...things that are lying around, seen, misunderstood...some of that material...some of the stuff that's going to stimulate creators is going to be protected. That's where we get into this gray area that I think artists can describe better than a lawyer ever could."

While the event was lively, and engaging, copyright in the educational realm or for libraries was not discussed, and no librarian sat on any panel, although the final session was moderated by New York Public Library events public program coordinator Paul Holdengraber. That would seem a glaring omission, given the size of the library and educational markets, the impact of technology, and the event's host, the CCC—especially at a time when Harvard University has introduced a faculty open access mandate, and publishers are suing Georgia State University over copyright infringement over its e-reserves. Nevertheless, the first OnCopyright event offered an entertaining afternoon of insightful conversation on increasingly complex issues.