Intermeddlers or Innovators? States and Federal Copyright Law

October 22, 2018
The Kentucky Law Journal Symposium

“Intermeddlers or Innovators: State and Federal Copyright Law”

Co-Organizers:
Prof. Bryan Frye (UK Law) and
Prof. Eric Johnson (U. Okla. Law)

Schedule

Introduction and Welcome
8:45 a.m.-9:00 a.m.
Professor Brian Frye (University of Kentucky College of Law)
Mat Payne (Kentucky Law Journal, Special Features Editor)

Copyrighting the Law
9:00 a.m. – 9:50 a.m.
Eric E. Johnson (University of Oklahoma College of Law),
Benjamin J. Keele, (Indiana University - Purdue University Indianapolis)

Incorporating Copyrighted Industry Standards into Law
10:00 a.m. – 10:50 a.m.
Emily S. Bremer (University of Notre Dame)
Timothy K. Armstrong (University of Cincinnati College of Law)

Creative Commons Licences: In Theory & In Practice
11:00–11:30 a.m.
Professor Frye (University of Kentucky College of Law)
Professor Johnson (University of Cincinnati College of Law)
Professor Tina Brooks (University of Kentucky College of Law)
Reception 11:30 a.m. - 12:00 p.m.
Woodward Hall Lobby

Lunch 12:00 - 1:00 p.m.

Grappling with Issues at the Intersection of Copyright and the Common Law
1:00 p.m. – 1:50 p.m.
Jake Linford (Florida State University College of Law)
Deidre Keller (Ohio Northern University)

Visual Arts and States Sales Taxes
2:00 p.m. – 2:50 p.m.
Adam B. Thimmesch (University of Nebraska)
Jennifer Bird-Pollan (University of Kentucky)

Artist Resale Royalties
3:00 p.m. – 3:50 p.m.
Guy Rub (The Ohio State University)
Brian L. Frye (University of Kentucky)
Christopher G. Bradley (University of Kentucky)
Miriam Kienle (University of Kentucky)

Closing Remarks 3:50 p.m. - 4:15 p.m.
Eric E. Johnson (University of Oklahoma)
Bethany Davenport (Editor in Chief)
Speakers

Brian Frye

Brian L. Frye joined the faculty of the University of Kentucky College of Law in 2012. He teaches classes in civil procedure, intellectual property, copyright, and nonprofit organizations, as well as a seminar on law and popular culture. Previously, he was a Visiting Assistant Professor of Law at Hofstra University School of Law, and a litigation associate at Sullivan & Cromwell LLP. He clerked for Judge Andrew J. Kleinfeld of the United States Court of Appeals for the Ninth Circuit and Justice Richard B. Sanders of the Washington Supreme Court. He received a J.D. from the New York University School of Law in 2005, an M.F.A. from the San Francisco Art Institute in 1997, and a B.A. from the University of California at Berkeley in 1995. His research focuses on intellectual property and charity law, especially in relation to artists and arts organizations. Professor Frye’s work has appeared in more than a dozen law journals including the Georgia State Law Review, the NYU Journal of Intellectual Property & Entertainment Law, and the George Washington University Law Review.

Professor Frye is also a filmmaker. He produced the documentary Our Nixon (2013), which was broadcast by CNN and opened theatrically nationwide. His short films and videos have shown in the 2002 Whitney Biennial, the New York Film Festival, and the San Francisco International Film Festival, among other venues, and are in the permanent collection of the Whitney Museum of American Art. His critical writing on film and art has appeared in October, The New Republic, Film Comment, Cineaste, Senses of Cinema, and Incite! among other journals.

Eric Johnson

Eric E. Johnson is an Associate Professor of Law at the University of Oklahoma College of Law. His courses include Torts, Science and Law, Antitrust, and Intellectual Property. Professor Johnson’s
research concentrates on intellectual property and on science and risk, with publications including the Northwestern University Law Review, the Boston University Law Review, the University of Illinois Law Review, and New Scientist magazine. His work was selected for the Yale/Stanford/Harvard Junior Faculty Forum in 2013. Before coming to OU, Johnson was on the faculty at the University of North Dakota School of Law where he was twice selected by students as the keynote speaker for UND Law’s graduation banquet, and where he was selected by the Class of 2018 to give the Commencement Address with Kit Johnson.

Before his academic career, Johnson was a litigation associate at Irell & Manella in Los Angeles, where he worked on intellectual property and general commercial matters. His clients included Paramount, MTV, CBS, Touchstone, Immersion Corporation, and the bankruptcy estate of eToys.com. After working at Irell, Johnson was an in-house attorney at Fox Cable Networks, negotiating and drafting deals for the Fox Sports cable networks. Johnson received his J.D. cum laude from Harvard Law School in 2000, where he was an instructor for the first-year course in legal reasoning and argument. He received his B.A. with highest honors and special honors from the Plan II Honors program at the University of Texas at Austin.

Adam Thimmesch
Professor Adam Thimmesch joined the faculty in 2012. His research focuses largely on state taxing jurisdiction and tax compliance issues. His articles have appeared in a variety of publications, including the Virginia Tax Review, the Florida Tax Review, the Utah Law Review, the Denver Law Review, and the Temple Law Review. He frequently speaks at academic and professional conferences around the country and blogs as a member of The SurlySubGroup. Professor Thimmesch teaches Individual Income Taxation, State and Local Taxation, Corporate Taxation, Business Associations, and Corporate Finance. He was voted the Professor of the Year by upper class law students in 2013, 2017,
and 2018 and received a College Distinguished Teaching Award in 2014.

He received his J.D. with highest distinction in 2005 from the University of Iowa College of Law, where he was an Articles Editor on the Iowa Law Review. After law school, Professor Thimmesch joined Faegre & Benson LLP in Minneapolis where his practice focused on tax and business matters, including structuring and negotiating domestic and international transactions, advising on state, federal, and international tax matters, and handling tax disputes before the Internal Revenue Service and state taxing agencies.

**Emily Bremer**
Professor Emily Bremer teaches and writes in the areas of administrative law, civil procedure, and business associations. Her scholarship focuses primarily on matters of procedural design and issues that arise at the intersection of public law and private ordering, with a particular focus on the use of privately developed technical standards in governmental regulation. Bremer serves as a Public Member of the Administrative Conference of the United States (ACUS), a small, free standing federal agency charged with improving government processes, procedures, and performance, and as a Council Member of the American Bar Association’s Section of Administrative Law and Regulatory Practice. She is a regular contributor to the Yale Journal on Regulation’s Notice & Comment blog.

Professor Bremer earned her B.A. in Politics, magna cum laude, from New York University and her J.D. from New York University School of Law, where she was the Executive Notes Editor of the NYU Journal of Law & Liberty and a student editor for the International Journal of Constitutional Law. After law school, she clerked for Hon. Andrew J. Kleinfeld on the U.S. Court of Appeals for the Ninth Circuit. She also practiced law as an associate in the telecommunications and appellate litigation group of Wiley Rein LLP in Washington, DC and served as the Research Chief of
Guy Rub
Professor Guy A. Rub is an expert in the intersection between intellectual property law, contract law, and economic theory. His work explores how markets shape and are being shaped by intellectual property law. His publications have appeared or are forthcoming in the Chicago Law Review, Harvard Journal of Law and Technology, Yale Law Journal Forum, and Emory Law Journal, among others. He presented his work extensively both domestically and abroad.

Professor Rub has studied law on three continents. He holds an SJD degree and an LL.M. degree from the University of Michigan Law School; a master’s degree in Law & Economics from the University of Madrid; a European Master in Law and Economics from the Erasmus University in Rotterdam, Netherlands; and an LL.B. degree from Tel-Aviv University. He was a law clerk to the Honorable Rina S. Meshel of the Tel-Aviv Appellate Court. Prior to joining Moritz, he was practicing at Munger, Tolles & Olson LLP in Los Angeles.

Professor Rub also holds a bachelor’s degree in computer science from Tel-Aviv University and worked as a software programmer and engineer prior to pursuing a career in law.

Jake Linford
Professor Jake Linford teaches at Florida State University College of Law and focuses his scholarship on Intellectual Property and Contract Law. Prof. Linford’s scholarly work has appeared in several journals including The Ohio State Law Journal, the Yale Journal of Law & Technology, and the Vanderbilt Journal for Entertainment & Technology Law.

Professor Linford received his J.D. from the University of Chicago, where he was a member of The University of Chicago Law Review, graduated with high honors and was elected to the
Order of the Coif. Prior to joining the Florida State law faculty, Professor Linford litigated copyright and trademark matters with the law firm of Pattishall, McAuliffe, Newbury, Hilliard & Geraldson, LLP, in Chicago and clerked for the Honorable M. Margaret McKeown of the United States Court of Appeals for the Ninth Circuit.

**Diedre Keller**

Professor Deidré Keller joined the Ohio Northern University (OUN) Claude W. Pettit College of Law faculty in August 2010 as an assistant professor. She has taught Property, Law and Literature, Internet Law, Legal Problem Solving and Analysis, and the Intellectual Property survey course and seminar. Her teaching interests also include First Amendment (freedom of speech), Copyright, and Trademark. During the summers of 2011, 2012, and 2013, Prof. Keller taught an Intellectual Property survey course for the LSAC DiscoverLaw.org PLUS program at ONU. The PLUS program is directed at undergraduates from groups underrepresented in the legal profession and who face significant financial and familial obstacles in their pursuit of a career in law.

Prior to joining the faculty, Prof. Keller practiced law in Atlanta, Georgia, with the firms of Sutherland, Asbill and Brennan, LLP and Seyfarth Shaw, LLP. She specialized in the procurement, registration and enforcement of intellectual property rights with a particular emphasis on trademarks and copyrights. Prof. Keller’s experience includes trademark portfolio management, counseling clients on matters including the adoption of trademarks, potential defenses to copyright infringement and issues related to litigating patent disputes. She has represented both plaintiffs and defendants in patent, trademark and copyright matters, and her clients ranged from individuals to publicly traded companies. Professor Keller’s scholarly works have been published in several journals including the UCLA Journal of Law & Technology, the Vanderbilt Journal of Entertainment & Technology Law, and the Case Western Reserve Law Review.
Panelists

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Notes & Questions
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