

TRANSCRIPTION
SECTION 108 STUDY GROUP PUBLIC ROUNDTABLE
JANUARY 31, 2007, DePAUL UNIVERSITY SCHOOL OF LAW, CHICAGO, ILLINOIS

Introduction

MARY RASENBERGER: Okay, why don't we get started? Good morning everyone. It's nice to see you. Welcome to -- this now the third roundtable discussion --

AUDIENCE: Can't hear you. You're not on the microphone.

MARY RASENBERGER: -- on Section 108. Oh, you can't hear me.

AUDIENCE: Not a word.

MARY RASENBERGER: -- okay.

DICK RUDICK: The microphones are only for the convenience of the -- recording.

MARY RASENBERGER: Let's shut the doors.

MARY RASENBERGER: Yeah, this is going to be tough, though. Okay. I'll stand up so you can hear me better. And I guess I'll say that everybody in the room and at the table is going to have to really speak up. For those of you in the back if you can't hear us at all, just tell us, okay? Can you hear me now?

AUDIENCE: Barely.

MARY RASENBERGER: Barely, really? Oh, dear. This is not good. We might need to --. Mary, we might need to try to get somebody --.

AUDIENCE: We have the subway out here that's the problem.

MARY RASENBERGER: Right.

AUDIENCE: The EI is running by.

MARY RASENBERGER: Okay, I will shout. Welcome! This is the third roundtable of the Section 108 Study Group. We are very happy to see everybody and so many distinguished people. I see so of -- many of the same faces that were here last March in Los Angeles and Washington, but I also see some new faces, so welcome. And we -- I just want to say thank-you for braving the cold to come here. It's -- it was a lot to ask people to come to Chicago in January. First, before we go on I do want to thank our hosts, DePaul University Law School and especially Barbara Bressler, who is the Director of the Center for IP Law & Information Technology, who is our host and arranged everything today. Is Barbara here? She'll be in and out and we'll make sure you meet her. But thank you Barbara and thank you DePaul. I think you all are familiar with the purpose of this Section 108 group so I'm not going to belabor that. If you want information about the group there is plenty of it on our website at

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www.loc.gov/section108 and also there is information in the Federal Register Notice. Also, feel free to talk to us or any of the members at the breaks.

This is going to be challenging with the subway. Let me reiterate the mission of the group so we all start on the same page. The purpose of the Section 108 Study Group is to conduct a re-examination of the exceptions and limitations applicable to libraries and archives under the Copyright Act, specifically in light of the changes that have been brought on by digital media. The group's task is to provide findings and recommendations on how to revise the law in order to ensure an appropriate balance among the interested creators, other copyright holders, libraries and archives, in a manner that best serves the national interest. And these are the key phrases, *to seek an appropriate balance in the national interest*. Dick, I think will be talking a little bit more about that in his opening remarks. So it's important to keep in mind we're not looking to solve all the problems of libraries and archives relating to copyright. We're not coming up with a wish list. We're looking for practical, appropriate balanced solutions to enable libraries and archives to provide core services for the benefit of the public without disrupting the exclusive rights and the purposes of copyright law.

The group is jointly sponsored by the NDIIPP Program that's led by the Library of Congress. NDIIPP is the National Digital Information Infrastructure and Preservation Program. It's also jointly sponsored by the Copyright Office and we have the Register, Marybeth Peters here with us today. It's worth reiterating that the group is, though, independent from the Library of Congress and the Copyright Office; meaning that the views of the group, the recommendations will be those of this particular group of experts, not of the Library, not of the Copyright Office. Chris Weston who is here and I are employees of the Copyright Office and the Library, we do sit in the group but we are not members of the group. We are there to provide organizational and administrative support, research and writing. We basically do – we do the grunt work or that's what we should be doing. All of the members of the group are volunteers, so we try to do what we can to move the work forward. There is a limit to what you can ask the people to do outside of their normal jobs. Abbey Potter is also a Library employee who sits in on the group meetings and is a librarian and helps us with factual research and pulling together the findings; and may be in touch with some of you for surveys and to gather factual information.

Let me introduce the group chairs, the co-chairs. Dick Rudick is the former General Counsel of Wiley and Sons and Lolly Gasaway, right to my right, is the Associate Dean for Academic Affairs at the University of North Carolina Law School and a law professor, and until very recently, the Law Librarian at the University of North Carolina Law School. Dick and Lolly will be leading the conversation today. And I do want to say they have both devoted a tremendous amount of time to the Study Group, all pro bono as well. And they really deserve an enormous amount of praise and thanks for their dedication and public service. I want to mention June Besek also who is in the audience who is the legal advisor to the group and is also a member of the group and has been helping us quite a bit. And John Warren of IPS Associates, who is right here, who is our strategy consultant and is helping us manage this rather unwieldy task of getting very different views to not only talk together, but try to reach consensus. The group has been meeting for close two years already, which is kind of frightening. We are bringing the meetings to a close the end of this spring, this summer.

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As you know, the meetings have not been open to the public and that is to generate free and open discussion, but the group is very interested in getting outside views and bringing in comment from the public. And that's the reason for having the public roundtables and the comment periods. We had, as I mentioned, we had two roundtables last March on the issues of preservation and eligibility, one in L.A. and one in Washington, D.C. This will be our only roundtable on issues related to copies for users and access. We will probably not be having another roundtable, but may have another – and I say may – another open comment, written comment period on some of the miscellaneous issues that we haven't addressed in the prior roundtables or today. Let me emphasize what the purpose of the roundtable is. It is for the Study Group to gather information and perspectives from you on the issues raised in the notice. We are not looking for advocacy right now at the table. There will be plenty of time for that later. We are really looking to you for information and to help the group formulate ideas and recommendations. You should know that on the issues we'll be talking about today, the group has made no final decisions and really is seeking your input. So your presence here today and your input is very important to the group.

The final report will be issued sometime later this year in 2007. It will go to the Library of Congress and the Register of Copyrights. And the Copyright Office will take it over from there once the report is done and they hold their own hearing, propose legislation, etc. I'll let Marybeth speak to that.

One last thing I do want to note is that we will be using the term "libraries" as a short-hand to mean "libraries, archives and museums." No slight intended – museums where appropriate – no intended slight to anybody, but it's just – it's easier. We refer to them this way in the Federal Register Notice. So if you hear somebody use the term "library," it is meant to encompass archives. And if it's in the right context, we're also talking about museums.

We are very fortunate to have the Register of Copyrights, Marybeth Peters here with us today and I was going to ask Marybeth, if you want to say a few words of welcome.

MARYBETH PETERS: Sure, actually somebody for the Copyright Office has been at each of the roundtables. This is the first one that I have attended. I want to thank all of you for coming here and I will take the responsibility of saying, working in a library, that section 108, which I was around when it was drafted, having been there more than 40 years, actually was in a paper-based environment. And if we were to move forward and have a meaningful exception, then we really needed to re-examine what adjustments needed to be made. To the 108 Group who has spent a long time in looking at these issues, I give them my thanks. But to all of you who are participating in the debate, which really is more still at the beginning of what might ultimately happen, I thank you. And like all of you in the back, I look forward to hearing what everybody has to say. It's all part of the mix in trying to figure out what are the issues and what are the solutions. So thank you all.

MARY RASENBERGER: Thanks Marybeth. We also have today in the audience many, if not most of the members of the Study Group. They're not at the table because we're here to hear from you today, but I did want to introduce them and say they are available at the breaks for questions. So if you guys could stand up --. Oh, I

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also want to introduce Melissa Levine, who is working with us as a consultant to help draft the reports. If you could start with June – stand up and introduce yourselves and we'll just go around like that, your name and where you're from. I've already introduced you, but --.

JUNE BESEK: June Besek, Columbia Law School.

MARY RASENBERGER: Miriam?

MIRIAM NISBET: Good morning, I'm Miriam Nisbet with the American Library Association.

PETER HIRTLE: I'm Peter Hirtle from Cornell University.

DON WATERS: Don Waters from the Andrew Mellon Foundation.

BOB OAKLEY: Bob Oakley, Georgetown University Law School.

MAUREEN WHALEN: Maureen Whalen, the Getty Trust.

PETER GIVLER: Peter Givler, Association of American University Presses.

MARTHA FISHEL: Martha Fishel, the National Library of Medicine.

JIM NEAL: Jim Neal, Columbia University.

JESSE FEDER: Jesse Feder, Business Software Alliance.

JOHN SCHLINE: John Schline, Penguin Group.

NANCY WOLFF: Nancy Wolff, Cowan, DeBaets, Abrahams & Sheppard.

LOIS WASOFF: Lois Wasoff, representing Houghton Mifflin Company.

PAUL WEST: Paul West from the Universal Music Group.

STEVE WEISSMAN: Steve Weissman, Time Inc.

MARY RASENBERGER: I think that's everybody. Thanks. Before I hand this over to Lolly and Dick, I did want to just let you know that we will be having one break this morning. We'll break for lunch at noon. We'll have another break in the middle of the afternoon. I am assuming there are bathrooms down the hall. Mary Rhoads, do you know where the restrooms are?

MARY RHOADS: That's a good question.

MARY RASENBERGER: Oh, yes. Well, we'll figure it out.

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DICK RUDICK: Oh, just go --.

MARY RASENBERGER: But here's Barbara –

DICK RUDICK: -- outside and.

MARY RASENBERGER: -- we thanked you earlier. So, Barbara Bressler is our host and thank you very, very much.

DICK RUDICK: No, it's – I took a test run. You just go outside, go left a short distance, do sort of dogleg and there they are, okay.

MARY RASENBERGER: Okay, so I'm going to turn it over to Lolly and Dick.

BARBARA BRESSLER: They're right outside the room here.

MARY RASENBERGER: Thank you Barbara.

DICK RUDICK: Well, welcome again. I see almost as many people at the table as there are candidates for President in 2008. I forget who it was. Maybe it Jay Leno who said that it'll be the first election where the – more than half of the people of voting age will be running for office. On my way here this morning, I passed for the first time in life; I'm ashamed to admit, the Chicago Public Library. And if you haven't seen it, if you look up on each corner of the building is the mother of all gargoyles. They are incredible. They could swallow the New York Public Library lions in one gulp. And I don't know what the message for us is, but maybe it's that if we should look up and listen and keep our eyes open. And maybe that's not a bad message for what is essentially a fact-finding exercise.

And all right --. This is – if you have one of these little gadgets, now is the good time to turn it off. I've turned mine off. Go there and do likewise, please. Lolly and I are going to ask a series of questions based on the Federal Register notice on the main topics, which are listed in the agenda which is in your packet and you should all have that packet. We may not get to all the questions because time is limited. We may change the sequence for flow. It doesn't matter because you can submit written comments covering anything that you haven't had a chance to say. We may ask our colleagues from the Copyright Office, or they may volunteer questions for more information that doesn't arise from the discussion. When you want to speak, please raise your hand and we'll try to get back to you in the order in which you have done so. You have nametags in front of you. If Lolly and I can't read your nametags, we'll have to identify you by physically describing you, which you might not like. So if you could – if you could orient your nametag so that -- particularly for my benefit. I'm getting on and I'm seeing-impaired, hearing-impaired, almost everything-impaired. So there is someone in defilade there behind Bill. Oh well, okay – we'll --. P-I-L-C-H, I can't – I can't quite see your nametag.

JANICE PILCH: Janice.

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DICK RUDICK: Okay, well thank you. Along the same lines, whenever you speak, please say your name because there is a transcriptionist and she can't do her job if she can't identify you. We have to be able to find the guilty parties later. We've got a tight schedule. The times for each of the subjects are in your handout. Again, it's more important to discuss what's critical in some depth than to cover everything. So we may have to cut some of the discussion short, regrettably.

Now, Mahatma Gandhi was once asked what he thought of Western civilization. And he considered it for a minute and said, "It would be a good idea." And the thing about civilization is it's full of rules and as Gandhi observed they're not always followed. This being Midwestern civilization, we only have a few rules and they're in your packet under the Roundtable Ground Rules and I'm just – they're important and for all of our benefits I'm going to run through it. Can you hear me?

MALE AUDIENCE: Not really.

DICK RUDICK: Well if you can't, that's too bad. That's about as loud as I can speak without getting really obnoxious. The reason for the roundtable is selfish. Our purpose is to gather information and perspective from you and therefore, this isn't a good time to ask questions of members of the study group. Although if you need clarification, by all means do ask the question for that purpose. I mentioned time constraints. In aid of that, if you could possibly limit your responses to the question to a maximum of three minutes; less is okay. We may have to call time if that doesn't happen. The reason for that is we want to hear from everyone and there are a lot of you. And the second is if we can get around the table once, it gives people a chance to respond to each others' comments and amplify their comments in response to those. So I think if we can discipline ourselves to do that, it'll be a – really a benefit. Connected with that, as I said before, you can make written comments. So anything you don't cover today, you'll have a chance to cover and we promise to read – that someone will read everything and bring it to our attention. The cut-off date for that is – am I right?

LOLLY GASAWAY: March 9th.

DICK RUDICK: March 9th. I think that covers the ground rules