
PREFACE

Scholars and jurists have repeatedly emphasized how an “uninhibited, robust, and wide-open” marketplace of ideas can promote social progress by facilitating open discussion and free exchange of ideas. In the same tradition of this metaphorical “marketplace,” the *Cardozo Arts & Entertainment Law Journal* has provided, in the past twenty years, a forum for jurists, scholars, practicing attorneys, policymakers, and members of the intellectual property and communications industries to debate, discuss, and disseminate ideas in the fields of art, media and intellectual property law.

The origin of the *Journal* can be traced back to the early 1980s, when a group of visionary students founded the first student-edited entertainment law journal in the United States. Published in spring 1982, the inaugural issue contained an article by Frederick F. Greenman, Jr. and Alvin Deutsch that was entitled *The Copyright Royalty Tribunal and the Statutory Mechanical Royalty: History and Prospect*. The issue also included student works on direct broadcast satellites, artists’ resale royalties, and the right of first refusal. Preceding these writings was the *Journal*’s Statement of Purpose, which is reprinted in full below:

During the past several decades the importance of the arts in American life has increased dramatically. Technological achievements have expanded communication capabilities and have created new legal relationships and issues. Many of the traditional legal concepts associated with arts and entertainment are being reexamined by legislators and courts. Few law school journals specialized in the areas of entertainment and the arts and the Benjamin N. Cardozo School of Law seeks to fill this void.

The *Cardozo Arts & Entertainment Law Journal* will be a lively, issue-oriented forum for the exploration of current problems in the growing field of arts and entertainment law. Legal scholars, jurists, practicing attorneys and students will provide original articles on the full range of legal issues affecting the arts and the entertainment industry, both in this country and abroad.

Over the course of the years, the *Journal* has grown to be one of the most widely-subscribed journals in the field and has published articles, essays, notes, comments, and book reviews on a large variety of issues, including art, entertainment, intellectual property, sports, First Amendment, communications, and cyberspace law. Featuring distinguished members of the academia, the legal community, and the

intellectual property and communications industries, writings in the *Journal* have been cited by the United States Supreme Court, the United States Courts of Appeals, jurists, scholars, attorneys, students, and the mass media.

Every year, the *Journal* sponsors a distinguished lecture on a cutting-edge issue in the field of intellectual property and entertainment law. Shortly after the *Journal* was created, Cardozo established the Herman Finkelstein Lecture to honor the former general counsel of the American Society of Composers, Authors, and Publishers (ASCAP) and director of the Nathan Burkan Memorial Competition. Lecturers included the late Professor Ralph Brown of Yale Law School, the late Simon Rifkind of Paul, Weiss, Rifkind, Wharton & Garrison, and Ralph Oman, the former Register of Copyrights of the United States.

A decade later, Cardozo established the Annual Tenzer Distinguished Lecture in Intellectual Property Law in memory of the late Herbert Tenzer, one of Cardozo's founders and benefactors. Since its inception, the Tenzer Lecture has become a premier event for which jurists, scholars, practitioners, alumni, and students gather. Past speakers include Under Secretary of Commerce Q. Todd Dickinson; Assistant Secretary of Commerce Bruce Lehman; Judges Jon Newman and Pierre Leval of the United States Court of Appeals for the Second Circuit; Dean Brian Fitzgerald of the Faculty of Law and Justice of Southern Cross University, New South Wales, Australia; Professor Jane Ginsburg of Columbia Law School; Professor J. Thomas McCarthy, author of *McCarthy on Trademarks and Unfair Competition*; and William Patry, former counsel to the Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary, United States House of Representatives.

In addition, the *Journal* sponsors and publishes a large variety of symposia. Topics covered include artists' rights, the Berne Convention, regulation of cable television, the construction of authorship, the National Information Infrastructure, the jurisprudence of ratings for television and motion pictures, Russian media law and policy, European responses to media ownership and pluralism, the right of publicity, early publication of patent applications, Internet domain names, the extension of copyright term, and government funding of the arts. Most recently, the *Journal* sponsored two highly-acclaimed and well-attended symposia: "Report from the Front Lines of the Art and Cultural Property Wars" and "Copyright Law as Communications Policy: Convergence of Paradigms and Cultures."

This year marks the twentieth anniversary of the *Cardozo Arts & Entertainment Law Journal*. To celebrate this milestone, the present volume brings together some of the most widely-cited articles published

in the *Journal* in the past twenty years and the numerous distinguished lectures sponsored by the Law School. These articles and lectures not only demonstrate the breadth and depth of contemporary scholarship on intellectual property, art, and media law, but also reflect the various issues that dominated the scholarly debate in the past twenty years. In sum, the *Journal* is as much about the marketplace of ideas as it is the marketplace itself.

Many of the writings collected in this volume were written before the Information Age. Yet, as Professor Marci Hamilton pointed out in her introduction, these writings are highly relevant to our current debate on the protection and regulation of expressions. Reproduced as they originally appeared in the *Journal*, these articles and lectures enable us “to understand and to succeed in the Information Era.”

Last but not the least, I would like to express my profound gratitude to Deans Paul Verkuil and Stewart Sterk and Professor Marci Hamilton for their enthusiastic support of this project. I also would like to thank Matthew Bower, Kevin Fritz, and Peter Wilner for providing excellent editorial and administrative assistance. In addition, I would like to thank the authors included in this volume for granting permission to reprint their articles and the past and present members of the *Cardozo Arts & Entertainment Law Journal* for their superb editing and devoted efforts. This volume is dedicated to all those who founded the *Journal*, who helped the *Journal* grow and flourish, and who continue to promote the full and free discussion in this “marketplace of ideas.”

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