A BRIEF HISTORY OF COPYRIGHT REVISION
Part of Copyright Society Mid-Winter Meeting
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Panel with Introduction by Daniel Cooper,[1]
and Eric J. Schwartz (Moderator),[2]
Justin Hughes,[3] and Molly Shaffer Van Houweling[4]

This panel will briefly recount the 21-year saga that shaped modern copyright law with the enactment of the Copyright Act of 1976. The panelists will revisit some of the major battles, stakeholder positions, and legislative challenges that culminated in the landmark Copyright Act. This is part one of a two-part program by the Copyright Society to celebrate the 50th anniversary of the 1976 Act with special commemorative programming. A second panel will present related issues at the Annual Meeting in June 2026. Be part of this milestone anniversary as we honor the legacy that continues to shape creativity and innovation today.[50]

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[5] This piece was transcribed and edited by Elizabeth Townsend Gard, Editor-in-Chief of the Journal of the Copyright Society, along with the Copyright Society Fellows team that included Holly Haney, Kristin Ivey, Cortez Collins, and Eric Dolente. Thanks also to Professor Hughes' research assistant Phoebe Sanders.

I. PRELIMINARY PANEL INTRODUCTION

Daniel Cooper: Now it is time for [the] panel, which is entitled *A Brief History of Copyright Revision*. So this organization is really great at discussing cutting edge issues like the ones we just heard about in the first panel. But sometimes I do think we're guilty of kind of taking for granted the larger historical context in which things arise. So this panel, which marks the beginning of our celebration of the 50th anniversary of the enactment of the 1976 Copyright Act, is an attempt to remedy that. And for this panel, I want to hand it over to the organizer of it, our esteemed former president, Eric Schwartz, also a partner at Mitchell Silverberg and Knupp, who will do some introductions and a brief background.

II. MODERATOR OPENING: THE 50TH ANNIVERSARY COMMEMORATION

Eric Schwartz: Thank you, Dan. Those of you who work in the production of TV serials know that the person who introduces the series and then drops out of sight until the conclusion of the show is called the Top and Tails host.[6] It is a really easy gig and that's my role here. This panel is part of the celebration and commemoration of the 50th anniversary of the enactment of the Copyright Act in October 1976.[7] As Dan mentioned, today's panel is the first of a two-part special, the second part coming in June at the annual meeting in Louisville.[8] As Top and Tails host, let me just briefly describe the Copyright Society's larger project, then introduce our two speakers, and then get off the stage. The 1976 Act, which is still called by some of us "the new act," took 21 years of legislative sausage making before it was signed into law by President Ford. That entire two decade period is referred to as Copyright Revision. It started in earnest in 1955 and proceeded with the Copyright Office taking the lead, undertaking the preparation of preliminary studies, 34 in all, and participating in myriad drafts of the legislation.[9] There were numerous hearings, particularly in the House, but also in the Senate, along with input from dozens of practitioners and academics, many who were prominent members of the Copyright Society.

The Copyright Society's 50th Commemoration, though, is not limited to the two panels. For a decade, the Society has considered creating a library of oral histories for

[6] The term is used in tv production, including production agreements. Think Laura Linney on PBS Masterpiece.
[7] Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (codified as amended at 17 U.S.C. §§ 101-810).
[8] The Copyright Society, 2026 Annual Meeting, 50th Copyright Society Annual Meeting (Jun. 16-18, on file with author) https://copyrightsociety.org/event/2026-annual-meeting/.
[9] U.S. Copyright Office, *Copyright Law Revision Studies*, https://www.copyright.gov/history/studies/.

those involved with copyright revision and its aftermath. Only this year did it come to fruition. Elizabeth Townsend-Gard and her team have already conducted over 60 oral histories of those who participated in revision and the 20 years of activity post-Revision.[10] They are gathering and organizing the largest collection of primary papers and materials, including multimedia materials for future researchers, practitioners, and scholars that will complement the Kaminstein volumes of the legislative history of the 1976 Act.[11] In a very recent development, this will now also likely include some of the personal papers and materials of Alan Latman.[12] Why include the post-revision period? Because the twenty year period after the Act went into force in 1978 saw more significant legislative and international developments than at any time in the history of the law, along of course with all the case law developments. If we just focus on the legislative and international developments in the 20-years window, so from 1978 when the new law went into force to 1998, here is a partial list: the treatment of computer software, obviously including the work of CONTU,[13] U.S. accession to the WTO/TRIPS Agreement,[14] U.S. accession to the two WIPO digital treaties,[15] and then all the ensuing enactment of implementing legislation for these agreements, including in 1988 for

[10] *See*, Introduction to the 1976 Copyright Act 50th Anniversary Interview Project, 73 J. Copyright Soc'y ___ (2026).

[11] Alan Latman & James F. Lightstone eds., *The Kaminstein Legislative History Project: A Compendium and Analytical Index of Materials Leading to the Copyright Act of 1976* (F.B. Rothman for the Copyright Soc'y of the U.S.A. & N.Y.U. Sch. of Law 1981–1985).

[12] Alan Latman (1930–1984) was a leading American copyright scholar and founding partner of Cowan, Liebowitz & Latman, P.C.. He served as the first Walter J. Derenberg Professor of Copyright and Trademark Law at New York University School of Law and was widely influential in shaping modern copyright doctrine. His early scholarship on fair use significantly informed the development of the fair use provision in the Copyright Act of 1976 and has been cited by the U.S. Supreme Court. Latman also served as Executive Director and Editor-in-Chief of the *Journal of The Copyright Society* and lectured internationally on copyright law. https://www.cll.com/alan-latman.

[13] CONTU (Commission on New Technological Uses of Copyrighted Works) was a federal commission created by Congress in 1974 to study how emerging technologies—especially computers and photocopying—should be addressed under U.S. copyright law. Its 1978 Final Report helped establish copyright protection for computer software and provided influential guidance on library and interlibrary copying practices. https://websites.umass.edu/copyright/copyright-basics/contu/.

[14] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

[15] WIPO Copyright Treaty, Dec. 20, 1996, S. Treaty Doc. No. 105-17, 2186 U.N.T.S. 121; WIPO Performances and Phonograms Treaty, Dec. 20, 1996, S. Treaty Doc. No. 105-17 (1997), 2186 U.N.T.S. 203.

Berne,[16] in 1994 for TRIPS,[17] in 1998 for the digital treaties, which we all know as the DMCA,[18] but also including a new section 512 of the Copyright Act.[19] Some of the also-rans, in no particular order, include: in 1998 copyright term extension,[20] in 1992 the Automatic Renewal Act,[21] in 1990 the Visual Artists Rights Act[22] and the Architectural Works Act,[23] in 1995, the adoption of a digital transmission right for sound recordings,[24] and, in 1994, the restoration of protection for foreign works, in a new Section 104A, as part of TRIPS implementation.[25]

However, today we focus on the Copyright Revision window, so the work from 1955 to October 1976. There is a good reason why this panel is entitled A Brief History. Justin and Molly have agreed to the task of trying to treat 21 years in 50 minutes. Their approach is to focus on one key, if not the key player in Revision, Barbara Ringer.[26]

Barbara came to the Copyright Office in 1949 right out of Columbia Law School and served in a variety of roles, ultimately serving as Register from 1973 to 1980.[27] It is estimated that Barbara drafted roughly 75% of the text of the 1976 Act.[28] She was a remarkable woman and one who was memorialized in a special edition of the Journal of the Copyright Society when she died in 2009, if you want to learn more about my good

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[16] The Biofeedback Certification International Alliance (BCIA) is a nonprofit organization established in 1981 (originally as the Biofeedback Certification Institute of America) to certify individuals who meet rigorous education and training standards in biofeedback and neurofeedback and to recertify those who continue their professional development; its policies are set by an independent board of clinicians, educators, and researchers, and BCIA board certification indicates that a practitioner has met entry-level competence and ethical standards in these fields. https://www.bcia.org/who-is-bcia-.

[17] Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994) (codified in scattered sections of 19, 28 & 29 U.S.C.).

[18] Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998) (codified in scattered sections of 17 U.S.C.).

[19] 17 U.S.C. § 512.

[20] Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827 (1998).

[21] Copyright Renewal Act of 1992, Pub. L. No. 102-307, 106 Stat. 264 (1992) (codified as amended at 17 U.S.C. § 304(a)).

[22] Visual Artists Rights Act of 1990, Pub. L. No. 101-650, tit. VI, 104 Stat. 5128 (codified at 17 U.S.C. § 106A).

[23]Architectural Works Copyright Protection Act, Pub. L. No. 101-650, tit. VII, 104 Stat. 5133 (1990)..(codified at 17 U.S.C. § 120).

[24] Digital Performance Right in Sound Recordings Act, , 17 U.S.C. §§ 106 and 114 (1995).

[25] Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994) (codified in scattered sections of 19, 28 & 29 U.S.C.).

[26] Barbara Ringer (1925–2009) served in the U.S. Copyright Office beginning in 1949 and became Register of Copyrights in 1966, the first woman to hold the post; she led major revisions of U.S. copyright law, including the legislative development of the 1976 Copyright Act, and was widely respected for her scholarship and leadership in modernizing copyright policy. *Barbara Ringer, 1973-1980*, U.S. Copyright Office https://www.copyright.gov/about/registers/ringer/ringer.html (last visited Jan. 13, 2026). (Hereinafter "Ringer")

[27]*Id.*

[28] *See*, Morton David Goldberg, *In Memoriam: Barbara Ringer*, J. Copyright Soc'y of the U.S.A, vol. 56, ii (2009), https://www.cll.com/assets/htmldocuments/clientuploads/MDG_-_Barbara_Ringer_Article.pdf

friend and my mentor.[29] At a broadcasters conference in 1974, Barbara was asked the status and likelihood of enactment of the new law–mind you, this was two years before enactment–her response, said with characteristic wit and honesty, "Just now it's like the farmers say, 'too wet to plow.'"[30]

We are very fortunate to have Justin Hughes and Molly Van Houweling here today. Their discussion is meant to introduce Copyright Revision for those completely unfamiliar with it and to highlight what Revision did entail and what was left undone for those more familiar with the process. Molly is the Harold C. Hohbach Distinguished Professor of Patent Law and Intellectual Property at the University of California, Berkeley. She served as the Associate Reporter for the ALI Restatement of Copyright.[31]

Justin is the Honorable William Matthew Byrne Professor of Law at Loyola Law School. As a senior advisor in the Obama Administration, he served as the chief U.S. negotiator for two multilateral copyright treaties: the Beijing Audio Visual Performances Treaty in 2012[32] and the Marrakesh Treaty for the Blind in 2013.[33] Both have extraordinary copyright law experience and you can explore more of that and their full bios in the materials. Molly and Justin, thank you for joining us. I suppose I should end by saying, tell us how the fields dried and what resulted. Thank you.

IV. HISTORY OF BARBARA RINGER

Justin Hughes: Thank you, Eric. Well, so during the 50th anniversary of the 1976 Act, you're probably going to hear a lot about problems with existing copyright law and what can and should be improved. And you'll probably hear about stuff that works pretty well. You'll probably hear rumblings about "the next great copyright act."[34] But we're going to leave all that to others. As Eric said, to honor the 50th anniversary of the Copyright Act, the Copyright Society asked us to talk about Copyright Revision, and we decided to take inspiration from the person who was at the center of that history that Eric already talked about, Barbara Ringer. And that's Barbara Ringer's picture along with her predecessor, Abe Kaminstein.[35] I said to Molly, we better clarify that early on so people

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[29] *Id.*

[30] *See* Barbara Alice Ringer, Demonology of Copyright (R.R. Bowker Co., 1974).

[31] The American Law Institute ("ALI") discusses, drafts, publishes and revises Restatements of law, Model Codes, and Principles of Law for legal audiences such as courts, legislatures, educators, and scholars. The latest version of the Restatement of Copyright law, as of May 16, 2025, received public comments and was sent to the ALI as "Draft No. 6" by the Copyright Office. https://www.ali.org/publications/restatement-law/copyright.

[32] Beijing Treaty on Audiovisual Performances, June 24, 2012, 52 I.L.M. 121 (2012).

[33] Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, June 27, 2013, 52 I.L.M. 1312 (2013).

[34] Maria A. Pallante, *The Next Great Copyright Act*, 36 COLUM. J. L. & ARTS 315 (2013), https://www.copyright.gov/docs/next_great_copyright_act.pdf..

[35] Abraham L. Kaminstein (1912–1977) served as Register of Copyrights from 1960 to 1971 and was a leading architect of the legislative revision process that culminated in the Copyright Act of 1976. He also played a prominent role in international copyright negotiations and continued advising on copyright matters after his retirement. https://www.washingtonpost.com/archive/local/1977/09/13/abraham-l-kaminstein-specialist-on-copyrights/6bc19d43-5290-4a99-a6fd-4b086b51b31a/.

don't think that's her husband or something. So that was her predecessor as Register from 1960 to 1971, and then Barbara became Register in 1973. And Molly's going to tell us a little bit about Barbara's history.

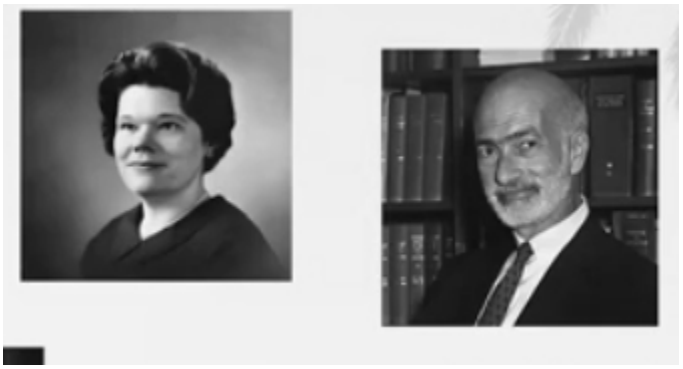

Figure 1: Photographs of Barbara Ringer and Abraham Kaminstein

Molly Shaffer Van Houweling: Eric got us started already and I thought it was so fitting that our predecessor was talking about the importance of mentorship at the Copyright Society. It's been fun to hear from Eric about how Barbara was a mentor to him and he got us started on her biography but I'll fill you in on a few more details.

She served as Register of Copyrights from 1973 until her retirement in 1980 but she began her career at the Copyright Office as an examiner in 1949.[36] Then she had a variety of leadership positions in the office throughout the period of the 34 Studies that we're going to be talking about more today and leading up to the 1976 Act. One copyright scholar has described her as having had nearly every job in the Copyright Office.[37] Now, I know we have lots of Copyright Office folks here today and they can probably dispute that. They probably know about more jobs than these, but it is a long list. She was Examiner,[38] Head of the Renewal and Assignment Section,[39] Assistant Chief,[40] Acting Chief,[41] Chief of the Examining Division,[42] Assistant Register of Copyrights for Examining,[43] and Assistant Register of Copyrights.[44] As Assistant Register and then as Register, she was, as Eric has said, the center of the negotiations and drafting that hammered out what became the 1976 Act. And in these roles, it's clear from both what

[36] Ringer, *supra* note 26.
[37] Amanda Levendowski, *The Lost and Found Legacy of Barbara Ringer*, Atlantic (July 11, 2014), https://www.theatlantic.com/technology/archive/2014/07/the-lost-and-found-legacy-of-a-copyright-hero/373948/.
[38] 1949-51. *Id.*
[39] 1951-55. *Id*.
[40] 1955-1960. *Id*.
[41] 1960. *Id*.
[42] 1961. *Id*
[43] 1963-1966. *Id*.
[44] 1966-1973. *Id.*

she wrote about her roles and what others have written about her that she really championed, among other things, careful drafting and compromise.

One of the articles that we put in your CLE materials for today begins with a quote from Edmund Burke: "all government, indeed every human benefit and enjoyment, every virtue and prudent act is founded on compromise and barter."[45] And I'd be interested to hear, maybe in the Q&A, folks' experience about the kind of barter that still goes on among those interested in copyright.

Ringer was in particular a pioneer among women in leadership positions, in government generally, and in copyright law. She was an advocate for other women and underrepresented groups. She was the first woman appointed Register, but only after being initially passed over for that position and successfully suing for gender discrimination.[46] I find it remarkable. It is clear from all the materials we have reviewed what a love she had for the institution that she then, I may be speculating here, but it seemed to me cared enough about to sue them for the opportunity to go on for decades of additional service to that institution. In a profile in *The Atlantic*, just 10 years ago, Professor Amanda Levendowski from Georgetown aptly summed it up: "She was a bona fide badass."[47] Now Justin, I think you did a little more research on this in sort of a broader context.

Justin Hughes: I mean, the first woman Register: you're thinking, "Well, our last four Registers have been women, so what's been the big to do here?" But when she became Register, you should know there had only been two women in the cabinet ever.[48] And the last woman in the cabinet in Washington had left the cabinet in 1955.[49] So for 20 years, there hadn't been another woman in the cabinet to talk about how few women in leadership positions. Indeed, the next woman in the President's cabinet didn't take her position until Carla Hill joined the cabinet two years after Barbara Ringer had become Register.[50] So that's the kind of world she was fighting and pushing and struggling in. We're here also, not to talk about her whole life, but to talk about the revision system, and she really being behind the scenes and in front of the scenes for a lot of the studies.

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[45] Barbara Ringer, *First Thoughts on the Copyright Act of 1976*, 22 N.Y.L. Sch. L. Rev. 477, 490 (1977) (quoting Edmund Burke, *Speech on Conciliation with America* (Mar. 22, 1775), in Selected Writings and Speeches at 181 (Stanlis ed. 1963)).

[46] *Ringer v. Mumford*, 355 F. Supp. 749 (D.D.C. 1973).

[47] Amanda Levendowski, *The Lost and Found Legacy of Barbara Ringer*, Atlantic (July 11, 2014), https://www.theatlantic.com/technology/archive/2014/07/the-lost-and-found-legacy-of-a-copyright-hero/373948/

[48] The first was Frances Perkins, who served as Secretary of Labor from 1933 to 1945. See Kirstin Downey, The Woman Behind the New Deal: The Life of Frances Perkins, FDR'S Secretary of Labor and his Moral Conscience and the Minimum Wage (2009); Penny Coleman, A Woman Unafraid: The Achievements of Frances Perkins (1993). The second was Oveta Culp Hobby, who served as Secretary of Health, Education, and Welfare from 1953 to 1955. *See* Debra L. Winegarten, Oveta Culp Hobby - Colonel, Cabinet Member, Philanthropist (2014).

[49] *Id. See also* Oveta Culp Hobby, National Women's Hall of Fame, at https://www.womenofthehall.org/inductee/oveta-culp-hobby/.

[50] Carla Hills (b. 1934) is an American lawyer and public official who served as U.S. Secretary of Housing and Urban Development (1975–77) and U.S. Trade Representative (1989–93), where she helped negotiate NAFTA and the Uruguay Round of GATT. https://www.thepresidency.org/carla-hills.

So Molly, tell us about the studies and that process. And for those who've worked in Washington, you might say to yourself, could we ever do anything like that again?

V. THE STUDIES

Molly Shaffer Van Houweling: Sure, so beginning in 1955, I think Eric already mentioned that as kind of the starting line for revision, although we're going to back up that starting line a little bit in a second, I think. So beginning in 1955, the Copyright Office conducted a series of studies of copyright law that were published by the Committee of the Judiciary Subcommittee on Patents, Trademarks, and Copyrights.[51] And we provided you in the CLE materials with a list of all of those studies, all 34 of them, to give you a sense of the range of questions contemplated in the run up to the 76 Act.[52] I have always thought of those studies as kind of the prehistory of the 76 Act and 55 as the starting line, but in fact, the very first study starts by telling the prehistory of *that prehistory*, various revision attempts that had happened between the enactment of the Copyright Act of 1909 and the kickoff of this revision process [in the 1950s].[53] And Barbara Ringer was credited as the main author of two of those many studies, not including study number one, but Justin, to understand the prehistory of the prehistory, you took a look at that.

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[51] Copyright Law Revision Studies (prepared for the Subcommittee on Patents, Trademarks, and Copyrights, United States Senate, 86th Congress, 1st–2d Session, published as government committee prints 1960–1961): 1. The History of U.S.A. Copyright Law Revision From 1901 to 1954; 2. Size of the Copyright Industries; 3. The Meaning of "Writings" in the Copyright Clause of the Constitution; 4. The Moral Right of the Author; 5. The Compulsory License Provisions of the U.S. Copyright Law; 6. The Economic Aspects of the Compulsory License; 7. Copyright Notice; 8. Commercial Use of the Copyright Notice; 9. Use of the Copyright Notice by Libraries; 10. False Use of Copyright Notice; 11. Divisibility of Copyrights; 12. Joint Ownership of Copyrights; 13. Works Made for Hire and on Commission; 14. Fair Use of Copyrighted Works; 15. Photoduplication of Copyrighted Material by Libraries; 16. Limitations on Performing Rights; 17. The Registration of Copyright; 18. Authority of the Register of Copyrights to Reject Applications for Registration; 19. The Recordation of Copyright Assignments and Licenses; 20. Deposit of Copyrighted Works; 21. The Catalog of Copyright Entries; 22. The Damage Provisions of the Copyright Law; 23. The Operation of the Damage Provisions of the Copyright Law: An Explanatory Study; 24. Remedies Other Than Damages for Copyright Infringement; 25. Liability of Innocent Infringers of Copyrights; 26. The Unauthorized Duplication of Sound Recordings; 27. Copyright in Architectural Works; 28. Copyright in Choreographic Works; 29. Protection of Unpublished Works; 30. Duration of Copyright; 31. Renewal of Copyright; 32. Protection of Works on Foreign Origin; 33. Copyright in Government Publications; 34. Copyright in Territories and Possessions of the United States (published together as government prints, 1960–1961). *See* https://www.copyright.gov/history/studies/

[52] There was a 35th Study on Manufacturing, which is included in the Memorial Edition of the Studies, published by the Copyright Society, as well as in Nimmer on Copyright.

[53] Abe A. Goldman, *The History of U.S.A. Copyright Law Revision From 1901 to 1954* S. Res. 53, 86th Cong., Sess. 1, Study no. 1, iii. 1https://www.copyright.gov/history/studies/study1.pdf

A. Study Number One

Justin Hughes: So study number one; if you really want to know American copyright history, you start with Study Number One in 1955 that was written by Abe Goldman.[54] For anyone who's worked in Washington, you read that study and you can get a palpable sense of the frustration of people on Capitol Hill because it wasn't in the mid-1950s they all woke up and said, "The 1909 Act is old; it needs revision." They were struggling with revision of the 1909 Act in the 20s[55] and the 30s[56] and the 40s.[57] Even during World War II, there were proposals in Congress for a revision of different parts of the Copyright Act.[58] But what I found most interesting is that in 1930-1931, under Congressman Vestal, they came very close to complete revision.[59] We almost are in a world where we would have had a 1931 Copyright Act. And in fact, they were seeking adherence to the Berne Convention in the 1920s and 1930s.[60] And those of you who do international copyright know the Berne Convention was a moving target. So every 10 years it's being revised.[61] But in January 1931, they passed comprehensive copyright reform in the House.[62] It went to the Senate. It was being debated on the Senate floor. And then there was a filibuster in the Senate on a different issue. And it never came up for a vote in the Senate.[63] That Congress ended. The next Congress starts, Vestal, chairing the House Committee on Patents, reintroduces the comprehensive legislation, and then he dies.[64] And his successor as chairman of the committee didn't really like the bill.[65] And so that was really the high point for absolutely comprehensive reform happening. So there is a prehistory here and we should in mind the context when Barbara Ringer and others were asking what can they do; they were keenly aware of these frustrating episodes where they almost got something across the line. But, Molly, do you want to tell us about the other studies?

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[54] *Id.*
[55] *Id.* at 5.
[56] *Id.* at 8-10.
[57] *Id.* at 11.
[58] *Id.* at 11-12.
[59] *Id.* at 6-7.
[60] *Id.* at 4-5, 8-9.
[61] Begun in 1886 and initially completed in 1896, the Berne Convention for the Protection of Literary and Artistic Property has been the subject of a series of substantial revisions: 1908 (Berlin), 1914 (Berne), 1928 (Berne), 1948 (Brussels), 1967 (Stockholm), and 1971 (Paris). *See* https://www.wipo.int/en/web/treaties/ip/berne/index.
[62] Goldman, *History, supra* note 53 at 6.
[63] *Id.* at 6-7. After the bill arrived in the Senate, it was referred to the Senate Committee on Patents which approved it "with a number of minor amendments." *Id.* at 6. Intermittent discussion of the bill continued on the Senate floor from 26 March until 2 February, but "further debate was blocked by a filibuster on another matter and the session ended before the bill could be brought to a vote." *Id.* at 6-7.
[64] *Id.* at 7.
[65] Vestal's successor, Congressman William Sirovich, had filed a "minority report" from the House Report on the Vestal bill. *Id.* at 6. When Sirovich became the new chair of the committee he "began anew," calling for "hearings to discuss the problems involved in copyright law revision without reference to any particular bill." *Id.* at 7.

B. The Other Studies: The Writings of Barbara Ringer

1. Study Number 31: Renewal

Molly Shaffer Van Houweling: Sure. We're going to go back to our guardian angels here. Each of us is going to focus a little bit and tell you about one of the reports that Barbara Ringer was the lead author for. And I reviewed the report that she wrote about renewal.[66] And interestingly, this report also starts with the prehistory to say, what's been happening about renewal since the 1909 Act.[67] And even before, it tells the tale of how the dual term of protection–initial term plus renewal requiring registration–was nearly eliminated by the 1909 Act.[68] There were all kinds of proposals in the run up to that previous revision that would have eliminated renewal and created what we're familiar with now, a life plus years system of protection for some works and defined protection for other works.[69] The impression Ringer gives when she tells about this history in the report on renewal is that everyone was so sure that this was going to happen, that they were going to get rid of renewal and replace it with a life plus years system, that when ultimately, kind of at the last minute, that consensus fell apart, they had to scramble to be like, well, how are we going to tweak renewal a little bit to make it work better than it has been working?[70] She doesn't pull any punches. She characterizes the results as quick, careless, and sloppy,[71] and then spends the bulk of the report trying her best to clarify the law of renewal as it existed after the 1909 act's tweaks. But even her best efforts to understand the law in its best light in light of the legislative history, honestly, it's still super confusing. And she is not satisfied with the results. “Needless to say,” she said, "the present situation is decidedly unsatisfactory."[72] And so then she goes on from that description of the history to say some more normative things about the renewal system.[73] And she argued in essence that the renewal system was not worth the complications and uncertainty that it caused, and it should be eliminated, at least insofar as it involved reversion to the author and the author's heirs.[74] That's what she saw as the key source of controversy and complication, trying to figure out who was eligible for the reversion and so forth. But she was not inattentive to a key concern of the renewal and reversion fans. That is the concern that authors often don't have great bargaining power, they don't have great information about the ultimate value of their works, and so their initial deal is often a bad one.[75] And one of the ideas of reversion is that it would give them a second bite at

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[66] *See* Studies Prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, *Study 31: Renewal of Copyright*, U.S. Copyright Office (1961) https://www.copyright.gov/history/studies/study31.pdf.
[67] *Id.* at 139-190.
[68] *Id*. at 113-122.
[69] *Id.*
[70] *Id.*
[71] *Id.* at 123 (describing inconsistencies that likely “resulted from careless drafting.”).
[72] *Id* at 176.
[73] *Id*. at 187-190.
[74] *Id*. at 187-190.
[75] *Id.* at 188-89.

the apple.[76] She took that concern seriously. And in general, she was known as a champion of authors, first among all of the other players in the copyright system. So, she was sympathetic to this concern, but she argued that it could be addressed in other ways. She lists a bunch of other ways that it could be addressed, including taking inspiration from the copyright law of other countries, which in general is something that these reports look to as a possible source of inspiration.[77] She does not mention in this report termination of transfer, but I think she's clearly foreshadowing it, and she was later credited as one of the authors of the termination of transfer provisions that were largely understood as playing this role, as giving authors a second bite at the apple, even in a system that no longer involved renewal.[78] So that's renewal, a bit of prehistory, sorting things out with an impressive clarity. Not a lot of patience for sloppy drafting. I should say she wasn't a fan of sloppy drafting by congressional drafters. She has constructive observations also about judges and copyright law professors. So no one was spared her discerning analysis in the report that I focused on. Now, Justin, you focused on a different one.

2. Study Number 26: The Unauthorized Duplication of Sound Recordings[79]

Justin Hughes: I did, but gosh, wouldn't it be nice to go back to a Washington, D.C. where strong language was, quote, "decidedly unsatisfactory?" Wouldn't that be nice to be back to that world? Barbara Ringer also solo-authored a report on unauthorized duplication of sound recordings.[80] So she was diving into this world of do we extend copyright protection to sound recordings? Again, as Molly said with the other study, her study on the duplication of sound recordings is a valuable history lesson. And we all think of federal protection of sound recordings as coming from the 1970s, but she walks us through all the bills that were introduced over time. And you might be surprised to know as early as 1906, they were discussing extending copyright protection of sound recordings.[81] And there were bills introduced in 1930,[82] 1932,[83] 1936,[84] 1937.[85] In 1939, there was a creative proposal to protect sound recordings not under copyright, but under the Communications Act of 1934.[86] So they were struggling with this the whole time, but the report is also interesting because it dives into something that professors like as a

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[76] *Id.*
[77] *Id*. at 189-190.
[78] 17 U.S.C. § 203 (termination of transfers); 17 U.S.C. § 304 (duration of copyright and termination of transfers).
[79] Barbara A. Ringer, The Unauthorized Duplication of Sound Recordings (February 1957), Studies on Copyright Law Revision for the Subcomm. on Patents, Trademarks, and Copyrights of the Senate Comm. on the Judiciary, 86th Cong., 2d Sess., Study No. 26 (S. Comm. Print 1961) [hereinafter Ringer, *Sound Recordings*], available at https://www.copyright.gov/history/studies/study26.pdf.
[80] *Id.*
[81] *Id.* at 3.
[82] *Id.* at 23-24.
[83] *Id.* at 25-27.
[84] *Id.* at 27-29.
[85] *Id.* at 30-31.
[86] *Id.* at 33.

philosophical issue:, that is, are phonorecords or sound recordings"writings" under the copyright and patent clause?[87] And then there's a very rich discussion of state and municipal law efforts.[88] I'm not surprised: what municipality had a law against the duplication of unauthorized sound recordings? Los Angeles, yes![89] So the different states were attempting to pass ordinances. And you can tell where her sympathies lie, because when she's discussing common law protection of sound recording, she says, "It appears settled that the contribution of performing artists to a sound recording constitute an original intellectual creation and are therefore eligible for common law copyright protection."[90] So she was clearly trying to push the conversation in a particular way. That's interesting because she's pushing the conversation not for what ends up in the 1976 Act, but what does happen with sound recordings.[91]

III. THE NEW 1976 COPYRIGHT ACT

A. Author-centric

Molly Shaffer Van Houweling: Let's fast forward to the new act in 1976. In a series of developments that puts us law professors to shame, between the time of the signing of the 76 act in [October 1976] and its going into effect in 1978–and I don't know if this is even all of it–she wrote at least two law review articles already reflecting on what had just been signed and thinking already about what was left to do.[92] We put them in your CLE materials. I'm going to start by focusing on the first of those.

This is an article in the New York Law School Law Review called "First Thoughts on the Copyright Act of 1976."[93] And in it she described how the 76 Act compared to reforms proposed in the Register's 1961 report, which was also part of this prehistory.[94] And she describes that 1961 report as an important step towards the 1976 act, but characterized its recommendations as "tentative at best" and closer really in structure and philosophy to the 1909 act than to the eventual 1976 Act.[95] And that's one of my biggest takeaways from this article: what a big deal the 1976 act was and how much of a fresh start it was.

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[87] *Id.* at 36-37, 47.
[88] *Id.* at 8-10. Of course, the Supreme Court eventually upheld state protection on sound recordings in Goldstein v. California, 412 U.S. 546 (1972).
[89] Ringer, *Sound Recordings, supra.* note 79 at 9-10.
[90] *Id.* at 12.
[91] This is 1971 Act extending federal copyright to sound recordings from 1972 onwards
[92] Barbara A. Ringer, *The Unfinished Business of Copyright Revision*, 24 UCLA L. Rev. 951 (1977). Barbara A. Ringer, *First Thoughts on the Copyright Act of 1976*, 22 N.Y.L. Sch L. Rev. 477 (1977). She also writes articles in anticipation of the passing of the 76 Act, including the "Demonology of Copyright," which is seen as a response to Benjamin Kaplan's *An Unhurried View of Copyright*. -ETG
[93] Barbara A. Ringer, *First Thoughts on the Copyright Act of 1976*, 22 N.Y.L. SCH. L. REV. 477 (1977).
[94] *Annual Report of the Library of Congress*, U.S. Copyright Office (1962) https://www.copyright.gov/reports/annual/archive/ar-1961.pdf.
[95] Ringer, *First Thoughts*, *supra* note 93 at 490.

I would have thought when you write a new copyright act, you start with the old copyright act, you figure out what's wrong with it, and you change those parts. As she describes in this article, participants in the drafting did not use the 1909 Act as the starting point and tweak from there. Of course, they had thoughts as we've heard about what was right and wrong about it, but this is what she says: "when it was originally drafted in the early 1960s, the bill that eventually became the 1976 act was not based on pre-existing legislation, least of all, the Act of 1909."[96] Instead, the raw materials were those 34 studies that we've talked about, other failed revision bills–all this prehistory of the prehistory, international conventions, the laws of other countries, as well as, she says, a mass of other primary and secondary materials.[97]

Here's another quote that I like and I find it quite inspiring. She says, "the basic drafting approach was to decide what to say and then say it as clearly and consistently as possible, whether or not it had ever been said that way before."[98] I find that so refreshing, and possibly a good rule for us all to follow. Her description also emphasizes a theme that we've already touched on, the theme of compromise. She said that no one was thrilled if you have successfully compromised: "On the whole, the first reactions to the enactment of the law have been the result of the process that produced it: parties to a genuine compromise are neither exultant nor mournful, since there are no winners or losers. No one is disposed either to rejoice or lament, and yet on nearly all sides there is a sense of satisfaction and accomplishment."[99]

Now there's another theme that emerges from this article which Justin and I found particularly striking, and so we are going to show you a quote from this.

> [T]here has been a shift in the philosophical base on which the copyright law of the United States rests. This change may not be readily apparent. Many people regard the establishment of a single federal system as a purely procedural matter, the change in the term of copyright as merely adding years, and the revisions in the sections on ownership and formalities as mere legalistic tinkering. But, taken as a whole, these changes mark a break with a two-hundred-year-old tradition that has identified copyright more closely with the publisher than with the author.[100]

Note some of the key language from this quote, which is about a shift in philosophy between the 1909 Act and the 1976 Act. She said, the 1976 Act marked "a shift in the philosophical base on which the copyright law of the United States rests," a shift away from publishers and toward an author-centric law.[101] She saw this shift in the new duration based on the life of the author.[102] She says it's going to communicate something different to the public. People will think about copyright as more author-centric if the duration is calculated based on the life of the author. She also lists the extension of federal copyright protection from the moment of the author's creation and fixation as

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[96] *Id* at 479.
[97] *Id*. at 479-81.
[98] *Id.* at 481.
[99] *Id.* at 482.
[100] *Id.* at 490.
[101] *Id*.
[102] *Id.* at 491.

opposed to publication;[103] the divisibility of rights, giving authors more flexibility in potentially negotiating power as they assign their various rights;[104] and of course the written instrument requirement that assures that there's good documentation when they do assign those rights.[105] Ringer is describing this shift. It's also clear that she sees it as a good thing.

As I've mentioned, she was generally regarded as a champion for authors within the copyright system. I was struck in particular by the point that she makes–maybe this would be obvious to all of you. It seems obvious once you read it, but I honestly hadn't fully contemplated it before–the point that the shift to triggering protection with creation and fixation as opposed to publication, that that was a really profound shift in terms of putting power in the hands of authors because, of course, you can't get copyright as an author until your work is published, which was in general the trigger for federal copyright protection in the past, even though since our first copyright act's predecessor, the Statute of Anne, it's been the case that copyrights have attached initially to the author as opposed to publishers. You can't get copyright based on publication, until you have a publisher. If you have a publisher, you probably have a publishing deal. If you have a publishing deal, you've probably assigned your copyright to the publisher. And so the whole structure, even though it seemed on the face of it perhaps author-centric, wasn't, until we made the shift to the trigger being creation and fixation. Now, as I say, Ringer clearly saw this development as a healthy one, but in the same article she refers to a "dark side of copyright revision."[106] And Justin, I think you gave a little bit of thought to the dark side.

B. The Dark Side

Justin Hughes: Both Molly and I were struck by how much Barbara Ringer thought this was a move to an author-centric law. And as Molly was talking, I thought about other things in that vein – for example, the clarity of work for hire provisions versus what was in the 1909 Act could be taken as author-centric, But Ringer also talks about the potential dark side of what they've done. Molly decided I'm the "dark side person."

So, the dark side was, Ringer said, that this generalization of the exclusive rights, coupled with some of the compulsory licenses that had been negotiated, could be a worrisome precedent. And she said, "Does our experience in the development of the 1976 Act suggest that in the future whenever a new right is granted by Congress, it will necessarily be subject to compulsory licensing?"[107] And we know the answer to her specific question is "No."[108] But we can understand her posing a more general question, that is, "Will any new right or protection for the copyright owner or the author be accompanied by carefully negotiated exclusions, exceptions, and limitations on that new right?[109] We all know the answer to that is "Yes." Those of us who have lived through the DMCA process know very well that any time nowadays in Washington when you're

[103] *Id.* 491-92.
[104] *Id. at 492-93.*
[105] *Id.* at 493.
[106] *Id*. at 494.
[107] *Id.* at 495.
[108] *Id.*
[109] *Id.*

talking about an extension or a new right for the author or the copyright owner, to get to that consensus, to get to that compromise, you're going to have to deal with a lot of requests for exceptions, limitations, carve outs. And so if you just think about the DMCA and you think about 1201, the difficulty was not writing the new protection, the difficulty was writing all the exclusions. She characterized that as a "dark side." I think she knew very well from her life experience that was just part of the compromise system. But very insightful, very prescient for what happened in the decades that came. So, that was very cool.

Molly Shaffer Van Houweling: Yeah, I think you're going to tell us next about the "unfinished business."

C. Unfinished Business

Justin Hughes: So, the nice thing about these two articles… well, there's one nice thing is that the Copyright Society wants for the [CLE materials] you get copyright cleared. And it was easy to pick Barbara Ringer articles because as a government employee, she had no copyright!

The other article we included in your pack is a piece from the UCLA Law Review called *The Unfinished Business of Copyright Revision*.[110] These two pieces are nice bookends because here you have the person who's the center, one of the architect, the leading architect saying on the one hand, "here's what we did," and then in the other piece, "here's what we didn't get done." I think it's admirable because when you have a person like Ringer who spends her decades working on copyright and really leads the charge to the culmination of the 1976 Act, what does it say about that person that she writes an article that talks about the unfinished business? It's like in DC, you know, Capitol Hill, they talk about people being workhorses or show horses. And she was clearly a workhorse. It's like "All right, here's what we didn't get done."

It also expressed her frustration. So in this piece in UCLA Law Review, she talks about, "what was left open for further interpretation or later consideration."[111] And some of those issues seem relatively unimportant to us now. For example, if you go back and read the copyright literature of the day, jukeboxes cast a big shadow.[112] I'm not sure the last time any of you saw a jukebox, but you read over and over again about jukeboxes. But other issues turned out to be much bigger, more complex challenges --and Ringer foresaw a lot of those.

In this article *Unfinished Business*, she described the 1976 Act as having some provisions that, as Molly talked about, were "radical break[s] with the past that have no precedent in American copyright tradition."[113] But then she talked about other pieces of

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[110] Barbara Ringer, *The Unfinished Business of Copyright Revision*, 24 U.C.L.A. L. Rev. 951 (1977) [hereinafter *Unfinished Business*].

[111] *Id.* at 955.

[112] For example discussions of jukebox copyright issues, in the same symposium issue as Ringer's *Unfinished Business*, see E. Fulton Brylawski, *The Copyright Royalty Tribunal*, 24 UCLA L. Rev. 1265, 1266-1285 (1977); Paul Goldstein, *Preempted State Doctrines, Involuntary Transfers, and Compulsory Licenses, Testing the Limits of Copyright*, 24 UCLA L. Rev. 1107, 1133-34 (1977). *See also* Robert A. Gorman, *The Copyright Act of 1976*, 126 U. Pa. L. Rev. 856, 887-884 (1978); Jon M. Waxman, *Performance Rights in Sound Recordings*, 52 Tex. L. Rev. 42, 70-78 (1973).

[113] *Unfinished Business, supra* note 111 at 954.

the 76 Act being "detailed responses to the problems in the 1909 bill."[114] Then again, in very polite language that was the blessed language of DC until recently, she gives us a whole list of topics that she thought were places where Congress "was unwilling or unable to make a final determination."[115]

When she talks about these places where Congress was unwilling or unable to make a final determination, you know if you read it carefully, you get a sense of frustration of someone who's devoted her life to these issues, and she's a real expert and in the weeds, and she's committed to compromise. She's not an ideologue. Yet, she's frustrated that Congress would not get to the finish line on some of these questions. And she says these are places where Congress was "unwilling or unable to make a final determination" and she says further that this is where Congress "appeared to induce private solutions to particular problems and where Congress had left things open to further change."[116] And what's interesting about this list is some of these topics, you look at them and you go, "We've been struggling with this for decades." For example, performing rights for sound recordings was dear to her because she had written one of the studies on that.[117] Computer uses for copyrighted works—how much of your life has been spent on "computer uses for copyrighted works?" Yesterday, today, and tomorrow. And Molly, what on this list did you think was most interesting to you?

Molly Shaffer Van Houweling: A couple of favorites. I will also observe more generally that when I started reading this article about the unfinished business, I figured it was going to be a list of things for Congress to do next that they ran out of time to do so that should be on the agenda. And some of the examples are that. I read carefully her discussion of copyright protection for works of the US government, which I thought might be an interesting reflection of some of the things we've been grappling with recently in terms of not just works by section 105,[118] but edicts of law, state law, privately generated standards and so forth that have been generating controversy. No, it was about this seemingly narrow question about whether there should be a statutory provision that says that the lack of copyright protection for US government works in the United States does not deny them the potential for copyright protection in other countries that do give copyright protection for government works.[119] But the initial amendment that was offered on this point only covered a specific office within the Department of Commerce that apparently was particularly exercised. It was the National Technical Information Service, NTIS.[120]

Anyway, this just proves the point. It was one of many agencies starting with a "N" the Department of Commerce that put forward this proposal. And she, in her kind but cutting way, said, that's a really stupid way to solve the problem you've put your finger on to have a provision that is just specific to this one office.[121] She thought Congress had started on that issue, not done a good job. And she said, if Congress wants to deal with

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[114] *Id.* at 954-955.
[115] *Id* at 955.
[116] *Id.*
[117] Ringer, *Sound Recordings, supra.* note 79.
[118] 17 U.S.C. § 105 (subject matter of copyright: United States Government works).
[119] *Unfinished Business*, at 955-60.
[120] *Id*. at 956.
[121] *Id.* at 959.

this, they're going to have to have more hearings about this to sort it out.[122] So there were some things like that where they kind of got a start but a bad start and ran out of time. But others had a different character.

Justin Hughes: One striking thing is these 34 studies so much refer to other jurisdictions and what other countries are doing. In almost every study, there's discussion about what other jurisdictions are doing, sometimes very detailed descriptions of other national copyright laws. And those of you who do policy on the Hill,you go talk to a member or a Hill staffer now and describe what other countries are doing, their eyesglaze over. So this was a different mindset and maybe that's why it came up. What else did you find interesting?

Molly Shaffer Van Houweling: In general, I found it striking that it wasn't what I thought. It wasn't, for the most part, a list of things for Congress to do. The list was a lot of things that she was sort of inviting other entities to work on. So with regard to sound recording, she talks about the Copyright Office's role doing a study with regard to reproduction and distribution by libraries and archives.[123] She talks about CONTU's guidelines.[124] She referred to the prospect for interested parties to work out some of these issues. She referred to that possibility with regard to library uses.[125] With regard to notice, again, she referred to the Copyright Office writing regulations, working out some of the details about notice. So it was a team effort which she was referring to in this unfinished business. And I found that very striking.

Although I also found it striking that she doesn't talk much here in *Unfinished Business* or in general, in the material that we read, about the constructive role of courts in working out some of these details. And in fact, when Justin says we think every day about computer uses of copyrighted works, I think you're referring in part to how we think about this in the context of courts figuring out what's the protectable subject matter within computer software. Of course, when you use your computer software to ingest other people's works and spit out things, what implications does that have? And she doesn't talk much about that. And I wonder if that reflects a little bit of skepticism and frustration about the role she had seen courts playing in the renewal report.

She talks a lot about litigation as a sign that the statute was not well drafted.[126] I think in a way maybe she aspired to draft so carefully that there was a little less left for courts to work out. But in fact, courts have contributed to working out the interstices of some of the questions that she said were unfinished. That's true, for example, with regard to the issue of library reproduction and distribution, where the CONTU guidelines that she referred to sort of optimistically in this unfinished business article—she said, CONTU has these guidelines, they've been embraced so far, and they're supposed to be updated every five years. So this will be continuing, she said, it'll continue to be unfinished business, but it's because they're going to keep working on it every five years. They have not. The CONTU guidelines for interlibrary loan have not been updated since the

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[122] *Id. at 960.*
[123] *Id*. at 963-64.
[124] *Id.* at 967.
[125] *Id*. at 968.
[126] *First Thoughts*, *supra* note 108.

1970s.[127] And so folks who need to operate in a world in which, of course, all kinds of practices and technologies in the library world have changed. Maybe Jonathan Band on the next panel can tell us more about this. They are now relying in part, of course, on the statutory language of Section 108,[128] but also on fair use to fill in some of the blanks and looking to courts to perform some of the unfinished business.[129] I'm sort of curious why she didn't seem to highlight that role in *Unfinished Business*.

Justin Hughes: Remember, she spent her entire professional career in government, in administrative work. So maybe it would have been different if she had spent five years as a litigator and then gone into government. She might have had a different perspective on courts as a lever to change things. But you're right, maybe that's a blind spot in how she conceived the world. I also think quite sensibly she probably had the political savvy to understand we got this across the finish line and, at this point, Congress is not going to be interested in me coming back and saying, "Okay, now you have to do all these things." So probably it reflected her political wisdom that she knew what they got was all they were going to get from Congress for a while. That's my guess. But it is an interesting list and to me, like I said, it's the jukebox effect. You go back to the studies, there are three of the 34 studies that are on the copyright notice and literally pages and pages about where the copyright notice should be;all that looks very archaic.[130] And also the 34 studies makes me think that there was some political dissension and they couldn't quite agree on who would get to do that work on the copyright notice. So a lot of the history strikes me as peculiar and past, but an awful lot of the discussion on performing rights and sound recordings and the challenges that computer applications were creating for copyright world will strike you as very resonant to the world you have lived in, to the professional experience you have had.

At this point, do we open it up for some Q&A?

IV. CLOSING REFLECTIONS AND Q&A

A. Closing Reflections

Molly Shaffer Van Houweling: I think it's almost time. We may have time for closing reflections. What did you take away from this deep dive into copyright revision and the career of Barbara Ringer?

Justin Hughes: Well, my partner says I'm a pack rat, so I have stacks and stacks of paper at home. I brought all these studies because I'm ready for some tough questions. And you know, I underline things and I go back. And when I read Study Number One, that made me go back and read the legislative history of the Vestal Bill in 1930.[131]

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[127] *See generally* Oakley, Meg, Laura Quilter, and Sara Benson. Modern Interlibrary Loan Practices: Moving beyond the CONTU Guidelines. Washington, DC: Association of Research Libraries, August 31, 2020. https://doi.org/10.29242/report.contu2020

[128] 17 U.S.C. § 108.

[129] 17 U.S.C. § 107.

[130] Study 7, Copyright Notice; Study 8, Commercial Use of the Copyright Notice; Study 9, Use of the Copyright Notice by Libraries; and 10, False Use of Copyright Notice. https://www.copyright.gov/history/studies/.

[131] Study No. 1 https://www.copyright.gov/history/studies/study1.pdf; Vestal Bill of 1930.

One thing that I was struck with is this: when you work on these policy issues, there will be, at the particular moment you're working on something, some issue which is a tough nut that people can't agree on. And if you go back into the historical record, you'll find no one cared about that same issue just a moment before. So in 1930, they're ready to go to life plus 50, and it's barely mentioned. It's like no one's saying anything about this. Whereas you get to 1998 when we go from life plus 50 to life plus 70 and all hell breaks loose. I was struck by the historical contingency of different moments. Does that make sense?

Molly Shaffer Van Houweling: It does. I was also struck by how many times what we thought were blockbusters had been, like so what? I guess I was struck mostly by how inspired I came away with the spirit of compromise, the devotion to clarity and careful drafting, which was expressed through the care that she took in these reports and all of her work, and also through some disappointment in the work of others that had been less clear. I found it refreshing the appetite for starting fresh and for considering all kinds of raw materials, including the laws of other countries, including failed efforts and not just using the status quo as a starting point. And I was impressed, as Justin has referred to, by what seems like a really impressive appetite for hard work and working on problems together and never quitting, even though it feels like you've crossed the finish line on what was the new act of 1976. Part of the inspiration that I felt for this endeavor of digging into Barbara Ringer's writings and the prelude and aftermath of the 76 Act was hearing from Eric [Schwartz] about how inspiring it was to work with her in real life, and I think he's going to join us to help moderate the question and answer period for the next 10 minutes or so..

B. Q&A

Justin Hughes: We have 13 minutes. That doesn't mean you get to ask longer questions. But very few of you are professors, so that's not as great a concern.

Eric Schwartz: Two things to note about her personal and professional resume. In 1949, why did she take the job at the Library of Congress? That is because in post-World War II America, there was a Veterans Preference Bill for U.S. government jobs for the (mostly) men returning from the war. As a woman, she could not get a job at any other agency. So she took the job at the only place available to her. Not that she later regretted it. Just that, at the time, as she used to joke, the government and hiring officials thought that, even with a Columbia Law degree, her only option as a woman was to become a librarian.

The other issue to note: her lawsuit against the Library of Congress to become Register was based both on gender and racial discriminations – the latter being a little unusual for a white woman.[132] That is because the managerial dopes at the Library of Congress happened to put into her personal employment record two things regarding race: one, that she had helped promote blacks in the Copyright Office, and two, that she had participated in the 1963 March on Washington, the Martin Luther King organized civil rights march at the Lincoln Memorial in Washington. Those two items were treated by the then-Library management as strikes against her for the job as Register. Those two things were noted by the Magistrate Judge in the District Court, in her favor, as part of

[132] Ringer v. Mumford, 355 F. Supp. 749 (D.D.C. 1973).

her discrimination lawsuit to install her in the position of Register when she was initally passed over for the job.

So questions?

Jay Dougherty: I've been a long time since I've read the studies and a lot of us are thinking about the recent Vetter decision.[133] You mentioned that the studies often use comparative law and references to international copyright in many of the studies including, no doubt, the renewal section. Did you get any sense in reading these again that Barbara or any of the folks writing those studies had any contemplation of there being the US law granting one world copyright or maybe the converse that in fact they recognize that copyright was territorial?

Justin Hughes: No.

Audience Member #1: I rest my case.

Justin Hughes. *Vetter v. Resnik* --probably many of you now think the Rules of Federal Civil Procedure are all messed up because you should be able to file for *en banc*. I don't care what others want, I want *en banc*. It needs to be fixed, but no, while there's a huge amount of attention to what other countries are doing, I never found any statement of, you know, it's a bundle of national copyrights, which is what someone should have said. They were doing comparative work to figure out what we should do domestically. They weren't trying to figure out an application abroad, except in the point Molly raised when Ringer's talking about this agency at Commerce says, "Well, there may be no copyright here, but we want to copyright abroad so we can charge people." So someone at the Department of Commerce had this crown copyright idea in their head.

Molly Shaffer Van Houweling: Actually in that report there is evidence of the contrary to which you refer, where among the reasons she says that the proposals that had been on the table were not acted on–she doesn't say they are stupid but she conveys the sense that they are stupid in part because they were too narrow focused on this one office within the Department of Commerce and because they seem silly. She said what does it matter what we say in our copyright act? That is not going to have a direct impact on what other countries do with their copyright protection in their countries.[134] And so, she really blamed the lack of understanding of the lack of extraterritorial effect of US copyright law. She used that as a way of critiquing these proposals.

Eric Schwartz: What I would add is this: she and Irwin Karp, a long-time member of the Society by the way, were the principal drafters of Sections 203 and 304 of the 1976 Copyright Act.[135] They taught it to me and it was absolutely clear to them that termination was only for U.S. rights. Also, Barbara was an internationalist and certainly understood territoriality. For example, before the U.S. could join the Berne Convention because of all of the laws formalities prohibited under Article 5.2 of Berne, Barbara drafted an alternative treaty: the Universal Copyright Convention. It was the most significant international multilateral on copyright protection in the last century, until the U.S. was able to join Berne. So she understood that copyright protection and rights do not cease at the border and are governed by the national laws where protection is sought. She also

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[133] Vetter v. Resnik, No. 25-30108 (5th Cir. 2026).

[134] *Unfinished Business*, *supra*, at 957.

[135] This is relating back to termination of transfer.

understood the basic principles, unlike the 5th Circuit, of the territoriality of copyright law. That was very important to her. Jonathan?

Jonathan Band:[136] So first, thanks for a fascinating panel. A couple of quick related questions. First, you mentioned that the reports mention other jurisdictions, so I just was wondering which jurisdictions? And then also you talked about the reports, but then sort of led from the reports to the act. And I was wondering if you could just talk a little bit about what the process was from how the reports then ended up in legislation and in particular, who were the stakeholders that were most important in that process? Thanks.

Molly Shaffer Van Houweling: I'm embarrassed to say that I did not read the entirety of all the appendices of the reports that I focused on, which is where we find a lot of the workhorse business appears in the appendices that catalogs relevant laws of other countries. In the substance of the ones that I focused on, she does not cite individual countries' laws as examples, but instead includes that stuff in the appendices. And in the articles, she talks about the process between the reports to the enactment. She talks at a pretty high level of abstraction about compromise between parties, about hearings, about vetting things to interested parties in advance of drafting, after drafting, certainly talks about the interests of authors, publishers, librarians in the sections that I focused on. Justin, did you see other examples where she highlighted particular [countries]?

Justin Hughes: Well first let's be clear, it wasn't just her studies, all the studies are very inclusive of international work. In her study on the duplication of sound recordings, for example, to answer your question, she goes through the 85 countries that were in a compendium of international copyright law, talks about the 54 that have some type of protection for sound recordings, but it varies from study to study. If you go to the moral rights study, there's actually a meaningful discussion about what are they doing in Great Britain, what are they doing in France, what are they doing in Switzerland. Where as in other cases, as with the sound recording one, it's just here are 54 countries that are doing something on sound recordings: some type of protection for sound recordings. But they do get into the weeds. It depends on the study. Some studies get very little into the weeds on what other countries are doing, and some are more compendiums. And one should admire those efforts. Again, one should try to place oneself back. Today, if you're doing comparative international copyright work, you can go to WIPO Lex, but in 1957, in 1962, good luck.[137] It's not about these studies, but I was just reading a 1967 British article which said, "Oh, there's perpetual copyright protection in Portugal and Nicaragua." There was perpetual copyright protection in Portugal until 1966, one year before the fellow wrote this piece. But he's to be forgiven that he didn't get the memo. Information like that didn't get sale from Portugal to Britain instantly in the mid-1960s and he didn't know. So, it varies report to report.

Audience Member #2: Who shepherded [the 1976 Copyright Act[? How was it shepherded? Howard Berman told me that he had a role in it.

Justin Hughes: I don't know the mechanics of who shepherded. Eric may have some commentary on that and Molly might.

Eric Schwartz: I think it was Senator McClellan in particular who introduced the bill that was eventually enacted [S. 22]. [Note, in the House it was Congressman

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[136] *See* Elizabeth Townsend Gard, Interview with Jonathan. Band, J. COPYRIGHT SOC'Y ___ (2026).
[137] WIPO Lex Database contains the laws of WIPO countries, both currently and often going back in time. *See* https://www.wipo.int/en/web/wipolex.

Kastenmeier who shepherded the bill through the House]. I do not recall for certain; if someone else can add names, please correct me. [138]

Audience Member #3: I was just curious, was there a study on the topic of publication, the jump from the description of publication, which is almost absent in the 1909 act and the very detailed description in 76 act? I don't know if that triggers a thought or if it just an obscure question, but it does still raise issues.

Molly Shaffer Van Houweling: I think Justin's looking it up.

Justin Hughes: I'm looking it up. Stall, Molly. Say something witty.

Eric Schwartz: I thought the particulars of the definition [of "publication"] in Section 101 were the result of case law melded into text. That is, the cases and facts and all of those instances of a "limited" publication versus a "general" publication. It resulted from when, for example, various rights holders tried to litigate the fact that even though they forgot to put a notice on a work when their film was screened at a film festival, they did not offer prints to the general public at that time, so therefore the film was still under copyright protection as an unpublished work. And all of those sorts of things and fact scenarios resulted in the definition. Yet again, I could be wrong.

Molly Shaffer Van Houweling: I see that Justin has the list.

Jay Doughtery: Molly, while you're stalling, it's worth mentioning the Kaminstein Legislative History Project. If you want to see who the stakeholders were and all of the references indexed to every single hearing that was held,[139] [Alan Latman and James Lightstone] put that all together in a series of books that are in old school libraries and it's quite thorough in terms of identifying who the stakeholders were and who testified and so on and so forth.

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[138] Sen. John McClellan (D-Ark.) was elected in the U.S. House from 1935-1939 and in the U.S. Senate from 1943 until his death in 1977. https://bioguide.congress.gov/search/bio/M000332; Cong. Robert Kastenmeier (D-Wisc.) was elected to the U.S. House in 1959 and served until 1991. https://bioguide.congress.gov/search/bio/K000020.

[139] Kaminstein Legislative History Project: A Compendium and Analytic Index of Materials Leading to the Copyright Act of 1976, Alan Latman and James F. Lightstone, eds., Published for the Copyright Society of the USA and NYU School of Law by Fred B. Rothman & Co., 1981. "This project is dedicated to Abraham L. Kaminstein, who served as Register of Copyrights during a key decade for the legislation about to be traced. Upon Mr. Kaminstein's death in 1977, the *Bulletin of the Copyright Society of the U.S.A.* expressed sentiments of the Society and also published other tributes from the floor of the House of Representatives and throughout the country. A memorial concert held at the Library of Congress included a tribute by Professor Alan Latman." This is how the Kaminstein Legislative History Project begins and is followed by Tributes to Kaminstein. The Kaminstein Legislative History Project is thorough, and includes a calender of events, and then goes section by section through the 1976 Copyright Act. The project is six volumes, and now is also available on the Copyright Society website for the first time. The Journal of the Copyright Society has bundled all six-volumes into a PDF (and also separate volumes) with a new introduction, and it is available on the Copyright Society website. *See* Alan Latman & James F. Lightstone eds., KAMINSTEIN LEGISLATIVE HISTORY PROJECT: A COMPENDIUM AND ANALYTICAL INDEX OF MATERIALS LEADING TO THE COPYRIGHT ACT OF 1976, 6 vols. (1981-1985). *See also* James Lightstone, Interview, 73 J. Copyright Soc'y ___ (2026) discussing the Kaminstein Legislative History Project, of which he was a co-editor.

Eric Schwartz: Thank you, Jay I mentioned the Kaminstein publications in my opening remarks because what Elizabeth Townsend-Gard is gathering now, all the papers and materials, is in my view, the companion pieces to those 1976 Act indexes.

Justin Hughes: No, there wasn't a specific [copyright revision study] report on publication. There was a specific report on protection of unpublished works.[140]

I would say if you go back and look at these studies, the Copyright Office blessed the studies, but there were 34 studies written by 18 or so people. So some people were like Barbara Ringer;she single authored or listed as the solo author of two studies, and she was also listed as a secondary author of one other study. And then, around 18, 19 people write the 34 studies. So many people are working on multiple studies, but after each one, there is a compendium of comments. And the comments are pretty interesting, and also it's kind of charming because there may be seven comments on a study instead of the copyright office now getting 700 comments when it asks a question. And so they could put the comments all right at the end of the study. They're familiar names: Melville Nimmer and folks that you would recognize and folks you wouldn't recognize.

Eric Schwartz: To add to the question on publication, for me, it is interesting in the "unfinished business" department, that after the Act was done, there are all of the cases concerning the making available and the right of communication in public regarding online uses. That these issues still live on. Other questions?

Molly Shaffer Van Houweling: I see we have a question from Zoom which actually triggers a thought that I was having.

Richard Dannay asks: "The termination provisions reflect compromise. Do you think they reflect consistency and clarity?"

Molly Shaffer Van Houweling: So, my short answer would be "No." And as I read through Barbara Ringer's description of what was wrong with the renewal provisions, I couldn't help thinking about termination.[141] For purposes of disclosure, I recently published an article in the Journal of the Copyright Society [on termination of transfer]. I've been reading some of the commentary on the termination of transfer provisions. Much of what she said about the renewal provisions echoed what people have since said about the termination provisions. Now, I think that some of the substance of the critique is a little different. She pointed out in the renewal provisions things that just seemed like mistakes, but they were like cutting and pasting errors basically. Whereas I think much of the critique of the termination provisions is not that these provisions are sloppy. It's that these provisions are very precise, very detailed, very complicated, and potentially very daunting, which is ironic to me, in light of her championing of authors. A critique of the provision intended to help authors is that they're not as helpful as she probably wanted them to be because the complexities make them daunting for mere mortals, not Barbara Ringers of the world in terms of their copyright expertise.

Justin Hughes: But clarity and complexity are not necessarily enemies. You can have something that is complex and clear. When the question asks, "Does it reflect

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[140] William Strauss, Study No. 29: Protection of Unpublished Works, (December 1957), https://www.copyright.gov/history/studies/study29.pdf

[141] Hanoch Dagan and Molly Shaffer van Houweling, *Reconstructing Copyright Reversion: Releasing authors from their Own Dead Hands*, 72 J. COPYRIGHT SOC'Y 1131 (2025).

consistency and clarity?" You're right. They're going to life Plus 50 and they're figuring out how we can translate over this second bite of the apple principle. I mean, is 35 years the right benchmark? What's the right benchmark? I don't really think there's a question here; there's just a compromise. And gosh, it would have been fun to be in the room and here how that number was chosen.

Eric Schwartz: Of course, the irony of termination is when drafting the 1976 Act, Barbara was looking ahead and trying to eventually lose all U.S.-law formalities as part of U.S.' eventual accession to Berne, as she would always talk about it. Yet, the termination sections add new formalities: the requirements of complying withg the various timetables to terminate, to give proper notice, the requirements of the specifics of what must be in the notices that have to be sent, the recordation of the notices at the Copyright Office, which by the way, is silent on when you have to record the notices, among other things.

Any other questions or comments? If not, join me in thanking Justin and Molly.