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## Introduction

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# COPYRIGHT SYMPOSIUM PART II COPYRIGHT PROTECTION FOR COMPUTER DATABASES, CD-ROMS AND FACTUAL COMPILATIONS

## INTRODUCTION

*Robert A. Kreiss\**

The Program in Law and Technology at the University of Dayton School of Law decided to sponsor a Scholarly Symposium on "Copyright Protection for Computer Databases, CD-ROMs, and Factual Compilations" in the wake of the Supreme Court's March 1991 decision in *Feist Publications, Inc. v. Rural Telephone Service Co.*<sup>1</sup> As soon as the decision was handed down it was apparent that *Feist* was a major Supreme Court opinion in the copyright arena and that it opened a host of issues which warranted probing by scholars and practitioners alike. Among the issues which *Feist* raised were those of:

- \* the constitutional parameters of copyright;
- \* how the new originality standard would compare and comport with protection in the international scene;
- \* the Copyright Office's policies for dealing with computer databases, works on CD-ROM, and factual compilations;
- \* what *Feist* contributed to an understanding of the nature of copyright;
- \* the policies which justify protecting databases in light of the fact that producing the works is expensive while copying is easy;
- \* whether copyright is an appropriate response to policies justifying protection and/or to policies concerning access to information;
- \* the extent to which *Feist* left open the door for state law protection;
- \* whether *Feist* portends a more definitive separation between copyright law and unfair competition law; and
- \* the enforceability of "sign-on" license agreements for databases.

The Symposium was held on November 8-9, 1991, in Dayton, Ohio. Copyright scholars, counsel for major corporations and industry associations involved in producing and distributing databases, and a

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1. *Feist Publications, Inc. v. Rural Telephone Service Co.*, 111 S. Ct. 1282 (interim ed. 1991).

Policy Planning Advisory to the Register of Copyrights were invited to gather, to present papers, and to discuss each other's papers. These people, the faculty members for the Symposium, were (alphabetically):

David O. Carson  
Schwab Goldberg Price & Dannay  
New York, New York 10036

Professor Wendy Jane Gordon  
University of Chicago Law School  
Chicago, Illinois 60637

Professor Dennis S. Karjala  
Arizona State University College of Law  
Tempe, Arizona 85287

Professor David L. Lange  
Duke University School of Law  
Durham, North Carolina 27706

Professor Jessica D. Litman  
Wayne State University Law School  
Detroit, Michigan 48202

John P. McDonald, Vice President  
and Assoc. General Counsel  
Dun & Bradstreet  
Murray Hill, New Jersey 07974-0027

Steve Metalitz, Vice President and General Counsel  
Information Industry Association  
Washington, D.C. 20001

John Odozynski, Senior Intellectual Property Attorney  
GTE Telephone Operations  
Irving, Texas 75038

Professor L. Ray Patterson  
Pope Brock Professor of Law  
University of Georgia School of Law  
Athens, Georgia 30602

Marybeth Peters  
Policy Planning Advisor  
Copyright Office  
Library of Congress  
Washington, D.C. 20540

Professor Leo J. Raskind  
Brooklyn Law School  
Brooklyn, New York 11201

Professor Jerome H. Reichman  
Vanderbilt University School of Law  
Nashville, Tennessee 37240

James E. Schatz  
Opperman Heins & Paquin  
Minneapolis, Minnesota 55401

Paul T. Sheils, Group General Counsel  
Dow Jones Information Services  
Princeton, New Jersey 08543-0300

Kurt D. Steele, Vice President  
and General Counsel  
Rand McNally & Company  
Skokie, Illinois 60076

Sara Straight Wolf, Vice President  
and General Counsel  
Mead Data Central, Inc.  
Dayton, Ohio 45401

The Chairman of the Symposium was:

Robert A. Kreiss  
Director, Program in Law and Technology  
& Associate Professor of Law  
University of Dayton School of Law  
Dayton, Ohio 45469-1320

In addition to the distinguished faculty for the Symposium, the audience contained attendees from industry and law firms. For example, there were attendees from: Dun & Bradstreet Information Services; Equifax, Inc.; Fujitsu, Ltd.; GTE Service Corp.; Mead Data Central, Inc.; NCR Corp.; Reynolds & Reynolds Corp.; TRW Inc.; and University Microfilms International. There were also attendees from the law firms of: Biebel & French (Dayton, OH); Brooks & Kushman (Southfield, MI); Frankfurt, Garbus, Klein & Selz (New York, NY); Ernest Hix (Dayton, OH); Marshall & Melhorn (Toledo, OH); Stanley Phillips (Dayton, OH); Rogers & Wells (New York, NY); Thompson, Hine & Flory (Dayton, OH); Karen Williams (West Carrollton, OH). In addition, faculty and counsel for the University of Dayton attended.

Each of the faculty members provided a written paper for the Symposium. In addition, each faculty member presented a paper orally.

In general, a discussion among all faculty and attendees followed each presentation. In a few instances, one or more faculty members presented papers responding to a paper by another faculty member, and then the floor was opened up for discussion.

All sixteen of the written papers, all sixteen of the oral presentations, and all of the discussions are contained in these two issues of the University of Dayton Law Review. Since oral communication relies to some extent on inflection, body language, gesture, and context, and since some slips of the tongue are inevitable in spontaneous discussions and oral presentations, some editing has been done by the authors and the editors in order to make the Symposium issues more readable and to correct the slips.

The order in which papers and discussions are presented in these two volumes is the same as the order in which the faculty spoke at the Symposium. Professor Leo Raskind spoke first. Hence, his written paper appears first in these volumes, followed by his oral presentation at the Symposium and then by the discussion of his paper. Professor David Lange was the second speaker, so his written paper, oral presentation, and the open discussion follow Professor Raskind's paper, presentation and discussion. The table of contents of these volumes provides the complete list of the order of speakers and materials.

The Scholarly Symposium would not have been possible without financial support by a number of corporate sponsors. The corporate sponsors were The Dun & Bradstreet Corp., Mead Data Central, Inc., and NCR Corp. The corporate contributor was The Reynolds and Reynolds Corp. The University of Dayton School of Law gratefully acknowledges the contributions of these corporations, without which there would not have been a Symposium.

Primary responsibility for planning the program fell on my shoulders as Chairman. It was my responsibility to solicit corporate sponsorships and contributions, to solicit input from law professors and people in industry as to whom we should invite, and to invite the speakers. I am particularly grateful that none of the corporate sponsors or contributors put forth any private agendas as to who should be invited or not invited, and none of them exerted any pressure on me to give the program any particular slant.

I decided quite early that I wanted to include representatives from both the academic community and from corporations and law firms which were involved in developing and marketing databases. I started my search for speakers by contacting law professors whose articles had been cited by Justice O'Connor in the *Feist* opinion. Justice O'Connor cited authors with whom she agreed and others with whom she disagreed. I started with those scholars since I believed that they would

have an understanding of the issues and an interest in this area of copyright. These two factors seemed important since we wanted our speakers to produce a scholarly article in the relatively short span of about five months. My search for speakers then expanded based on suggestions from those initial contacts.<sup>2</sup>

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2. Editors' Note: In his introduction to volume 17 issue 2, Professor Kreiss also discusses the Supreme Court's analysis in *Feist* and the issues raised by that analysis. See Robert A. Kreiss, *Introduction*, 17 *Ill. D. & T. J.* REV. 327-30 (1992).

