

The ALI Restatement of Copyright Law- How it is Being Made

Oregon State Bar – IP Section Luncheon

September 6, 2017

Professor Lydia Pallas Loren

Lewis & Clark Law School

Associate Reporter, *Restatement of Law, Copyright*

- Founded 1923
- Mission: to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.



Membership

Limited to 3,000 elected members

Also ex officio members and life members

Total membership of more than 4,500

MEMBERS BY CATEGORY

Includes Elected, Elected & Ex Officio,
Life, Honorary, and Ex Officio



Oregon Membership: 39

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James A. R. Nafziger ◊

Symeon C. Symeonides ◊§

Martha Lee Walters

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Alfred T. Goodwin ‡

Elected, † Elected and Ex Officio, * Ex Officio, ‡ Honorary, ◊ Life, ‡ Life and Ex Officio, § Sustaining

Publications

The ALI drafts, discusses, revises, and publishes:

- Restatements of the Law
- Model statutes, Examples:
 - Uniform Commercial Code (in conjunction with the Uniform Law Commission)
 - Model Code of Evidence
 - Model Penal Code
- Principles of the Law

COMPLETED PRINCIPLES OF THE LAW INCLUDE:

Aggregate Litigation
Corporate Governance
Family Dissolution
Software Contracts
Transnational Civil Procedure
Transnational Insolvency
Transnational Intellectual Property

Restatements of the Law

12 Current Restatement Projects:

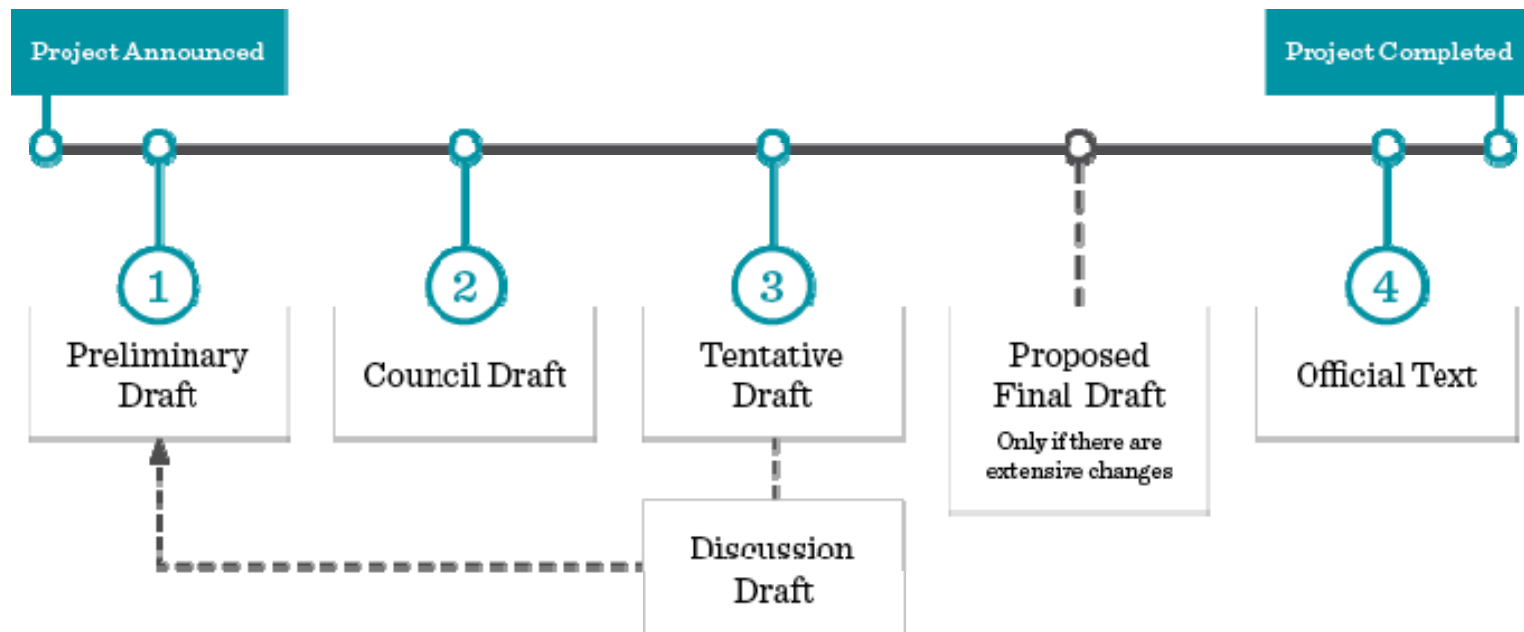
The Law of American Indians
Charitable Nonprofit Organizations
Children and the Law
Conflict of Laws
Consumer Contracts
Copyright
The Foreign Relations Law of the United States
The U.S. Law of International Commercial Arbitration
Liability Insurance
Property
Torts: Intentional Torts to Persons
Torts: Liability for Economic Harm

COMPLETED RESTATEMENTS OF THE LAW INCLUDE:

Agency	Property
Conflict of Laws	Restitution and Unjust
Contracts	Enrichment
Employment Law	Suretyship and Guaranty
Foreign Relations Law of the United States	Torts
Judgments	Trusts
The Law Governing Lawyers	Unfair Competition

The Drafting Process

RESTATEMENT (SECOND) OF TORTS §847A (AM. LAW INST., Tentative Draft No. 17, 1974)



Project participants

- Reporter and Associate Reporters
- Project Advisors
- Project Members Consultative Group (MCG)
- ALI Council
- ALI membership (annual meeting)

Restatement of Law, Copyright

Reporter:

- Christopher Jon Sprigman New York University School of Law
New York, NY



Associate Reporters

- Daniel J. Gervais Vanderbilt University Law School
Nashville, TN
- Lydia Pallas Loren Lewis & Clark Law School
Portland, OR
- R. Anthony Reese University of California, Irvine School of Law
Irvine, CA
- Molly S. Van Houweling University of California, Berkeley
School of Law
Berkeley, CA



Restatement of Law, Copyright

Advisors: 51 members (see separate handout)

Members Consultative Group: 74 (as of 9/5/17)

RESTATEMENT OF THE LAW,

Copyright

This Restatement will encompass general copyright law.

	STATUS	PARTICIPANTS	
	DRAFTED*	COUNCIL APPROVED	MEMBERSHIP APPROVED**
CHAPTER 1	§§ 1.01-1.10		
CHAPTER 2	§§ 2.01-2.06		
CHAPTER 3			
CHAPTER 4			
CHAPTER 5			
CHAPTER 6			
CHAPTER 7			
CHAPTER 8			
CHAPTER 9			
CHAPTER 10			
CHAPTER 11			

§§ PARTIAL SECTION ONLY; SECTIONS INDICATED

* PRELIMINARY DRAFT UNLESS OTHERWISE INDICATED. DE+DISCUSSION DRAFT, TD+TENTATIVE DRAFT, PRELIMINARY DRAFTS AND COUNCIL DRAFTS ARE AVAILABLE ONLY TO PARTICIPANTS AND THE COUNCIL. DISCUSSION DRAFTS AND TENTATIVE DRAFTS ARE AVAILABLE TO THE PUBLIC AFTER THE ANNUAL MEETING.

** ONCE IT IS APPROVED BY THE MEMBERSHIP AT AN ANNUAL MEETING, A TENTATIVE DRAFT OR A PROPOSED FINAL DRAFT REPRESENTS THE MOST CURRENT STATEMENT OF THE AMERICAN LAW INSTITUTE'S POSITION ON THE SUBJECT AND MAY BE CITED IN OPINIONS OR BRIEFS UNTIL THE OFFICIAL TEXT IS PUBLISHED.

Members - sign in to access materials for your current projects or join a Members Consultative Group.

SIGN IN

Meetings

DEC 7 THU

Restatement of the Law,
Copyright

<https://www.ali.org/projects/show/copyright/>

Copyright *Philadelphia, December 3-4*



ALI Deputy Director Stephanie A. Middleton, Reporter Christopher Jon Sprigman of New York University School of Law, Associate Reporters Lydia Pallas Loren of Lewis & Clark Law School, R. Anthony Reese of the University of California, Irvine School of Law, Molly S. Van Houweling of the University of California, Berkeley School of Law, and Daniel J. Gervais of Vanderbilt University Law School



Pierre N. Leval of the U.S. Court of Appeals, Second Circuit

A Restatement of the Federal Copyright Act?

Restatements and federal law

- Absence of inter-circuit stare decisis
- May have many dis. ct. opinions addressing a topic
- Many examples of Restatements being used by the courts (including the Supreme Court) to aid in interpreting and “gap-filling” of federal statutes

Richard L. Revesz, Restatements and the Federal Law,
Sept. 27, 2016 (ALI Quarterly Newsletter)
<https://www.ali.org/news/articles/restatements-and-federal-common-law/>

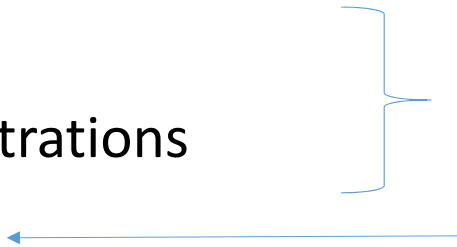
Restatements and statutory law

- Where scope of discretion is broad Restatements can provide guidance
- Seek to provide the best interpretation of particular statutory provisions
 - Not to say what a better statute might look like

Richard L. Revesz, Restatements and Federal Statutes,
March 10, 2016 (ALI Quarterly Newsletter)
<https://www.ali.org/news/articles/restatements-and-federal-statutes/>

Component parts of a Restatement

- “Black Letter”
- Comments with illustrations
- Reporter’s Notes



Official position of the ALI
Approved by Council and full membership

NOT the official position of the ALI –
Reporters only