

# 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

| OREGON                  |  |
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| <u>Beaverton</u>        |  |
| Hilary K. Krane         |  |
| <u>Eugene</u>           |  |
| Melissa Aubin           |  |
| Carl S. Bjerre          |  |
| Leslie Joan Harris      |  |
| Maurice J. Holland ◊    |  |
| Michael Moffitt *       |  |
| James M. O'Fallon       |  |
| Arden J. Olson §        |  |
| David Schuman §         |  |
| Rennard Strickland §    |  |
| Dominick Vetri          |  |
| Merle Weiner            |  |
| <u>Medford</u>          |  |
| John William Strong ◊§  |  |
| <u>Portland</u>         |  |
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| Townsend Hyatt          |  |
| Peter R. Jarvis         |  |
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| Robert H. Klonoff       |  |
| Michael D. Levelle *    |  |
| Hans A. Linde ◊         |  |
| Lydia Pallas Loren      |  |
| John T. Parry           |  |
| Ellen F. Rosenblum      |  |
| Les Swanson ◊           |  |
| <u>Salem</u>            |  |
| Thomas A. Balmer *      |  |
| Curtis Bridgeman *      |  |
| Gilbert Paul Carrasco   |  |
| Richard B. Hagedorn ◊   |  |
| Erin C. Lagesen §       |  |
| James A. R. Nafziger ◊  |  |
| Symeon C. Symeonides ◊§ |  |
| Martha Lee Walters      |  |
| <u>Sisters</u>          |  |
| 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:

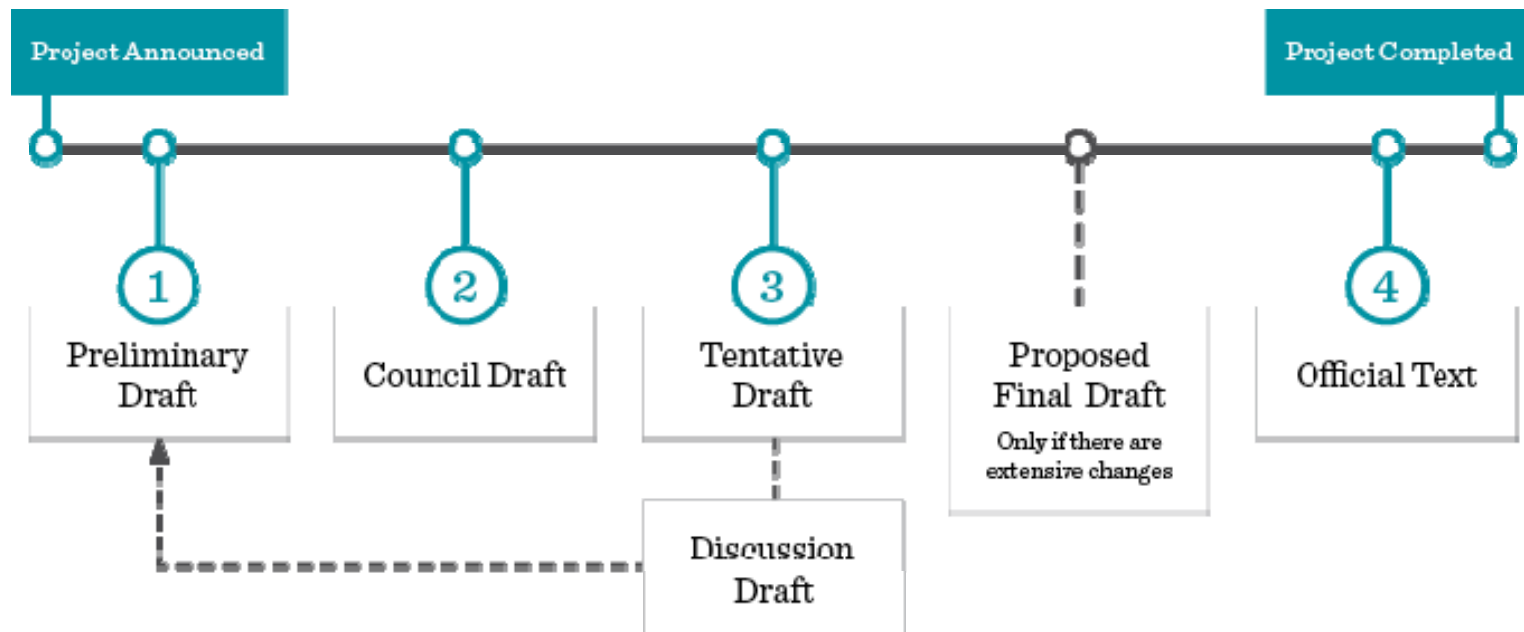
The Law of American Indians  
Charitable Nonprofit Organizations  
Children and the Law  
Conflict of Laws  
Consumer Contracts  
Copyright  
The Foreign Relations Law of the United States  
The U.S. Law of International Commercial Arbitration  
Liability Insurance  
Property  
Torts: Intentional Torts 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<br>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            |                              |
|------------|-----------------|-------------------------|------------------------------|
|            | <b>DRAFTED*</b> | <b>COUNCIL APPROVED</b> | <b>MEMBERSHIP APPROVED**</b> |
| 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/>

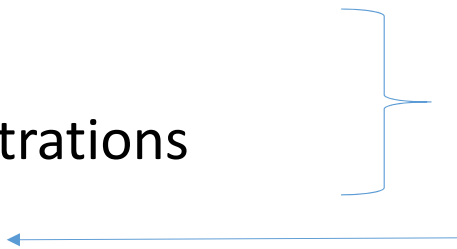
## Restatements and statutory law

- 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