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
Oregon Membership:

39

<table>
<thead>
<tr>
<th>City</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beaverton</td>
<td>Hilary K. Krane</td>
</tr>
<tr>
<td>Eugene</td>
<td>Melissa A.ubin</td>
</tr>
<tr>
<td></td>
<td>Carl S. Bjerre</td>
</tr>
<tr>
<td></td>
<td>Leslie Joan Harris</td>
</tr>
<tr>
<td></td>
<td>Maurice J. Holland</td>
</tr>
<tr>
<td></td>
<td>Michael Moffitt *</td>
</tr>
<tr>
<td></td>
<td>James M. O'Fallon</td>
</tr>
<tr>
<td></td>
<td>Arden J. Olson §</td>
</tr>
<tr>
<td></td>
<td>David Schuman §</td>
</tr>
<tr>
<td></td>
<td>Rennard Strickland §</td>
</tr>
<tr>
<td></td>
<td>Dominick Vetri</td>
</tr>
<tr>
<td></td>
<td>Marle Weiner</td>
</tr>
<tr>
<td>Medford</td>
<td>John William Strong Ø§§</td>
</tr>
<tr>
<td>Portland</td>
<td>John A. Bogdanski</td>
</tr>
<tr>
<td></td>
<td>Lawrence R. Brown Ø</td>
</tr>
<tr>
<td></td>
<td>William Funk</td>
</tr>
<tr>
<td></td>
<td>Gersham Goldstein Ø</td>
</tr>
<tr>
<td></td>
<td>Susan P. Graber</td>
</tr>
<tr>
<td></td>
<td>Douglas G. House §</td>
</tr>
<tr>
<td></td>
<td>Townsend Hyatt</td>
</tr>
<tr>
<td></td>
<td>Peter R. Jarvis</td>
</tr>
<tr>
<td></td>
<td>Jennifer J. Johnson †</td>
</tr>
<tr>
<td></td>
<td>Craig N. Johnston</td>
</tr>
<tr>
<td></td>
<td>Robert H. Klonoff</td>
</tr>
<tr>
<td></td>
<td>Michael D. Levie *</td>
</tr>
<tr>
<td></td>
<td>Hans A. Linde †</td>
</tr>
<tr>
<td></td>
<td>Lydia Pallas Loren</td>
</tr>
<tr>
<td></td>
<td>John T. Parry</td>
</tr>
<tr>
<td></td>
<td>Ellen E. Rosenblum</td>
</tr>
<tr>
<td></td>
<td>Les Swanson †</td>
</tr>
<tr>
<td>Salem</td>
<td>Thomas A. Balmer *</td>
</tr>
<tr>
<td></td>
<td>Curtis Bridgeman *</td>
</tr>
<tr>
<td></td>
<td>Gilbert Paul Carrasco</td>
</tr>
<tr>
<td></td>
<td>Richard B. Hagedorn §</td>
</tr>
<tr>
<td></td>
<td>Erin C. Lagesen §</td>
</tr>
<tr>
<td></td>
<td>James A. R. Nafziger †</td>
</tr>
<tr>
<td></td>
<td>Symeon C. Symeonides Ø§§</td>
</tr>
<tr>
<td></td>
<td>Martha Lee Walters</td>
</tr>
<tr>
<td>Sisters</td>
<td>Alfred T. Goodwin §</td>
</tr>
</tbody>
</table>

Elected, † Elected and Ex Officio, * Ex Officio, † Honorary, Ø 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
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
The Drafting Process

**Restatement (Second) of Torts §847A (Am. Law Inst., Tentative Draft No. 17, 1974)**

- **1. Preliminary Draft**
- **2. Council Draft**
- **3. Tentative Draft**
- **4. Official Text**

**Discussion Draft**

- Only if there are extensive changes
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)
Copyright

This Restatement will encompass general copyright law.

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

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

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 the Federal Law, Sept. 27, 2016 (ALI Quarterly Newsletter)

Richard L. Revesz, Restatements and Federal Statutes, March 10, 2016 (ALI Quarterly Newsletter)
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