

# FOREWORD

## THE DIGITAL CONTENT SYMPOSIUM

PAMELA SAMUELSON†

The chance that a law will achieve its intended purpose improves when it is grounded in an accurate understanding of the phenomena it will regulate. The Digital Content Symposium reported in this volume was organized in the hope that it would provide lawyers and others involved in the policy process with a firmer grounding in digital technologies and businesses that distribute digital content so that the law to regulate them can be shaped in an appropriate manner. The Symposium brought together representatives of a number of digital content industries, lawyers, and legal academics to discuss emerging business models and to identify legal regulations that may be needed to enable digital content marketplaces to develop and thrive.<sup>1</sup> It also hoped to discern whether or not present regulations, unless changed, would impede development of those marketplaces by, for example, making certain promising business models impossible or very difficult to pursue.<sup>2</sup> Because the digital environment is relatively “frictionless” owing to the lack of physical constraints on digital entrepreneurs, the law may play a more important role in facilitating or impeding Internet commerce than it has played in fostering other industries.<sup>3</sup>

The Symposium did not aim to formulate a set of plain-vanilla consensus positions on these issues. Nor did such consensus emerge from the Symposium. The industry presentations made clear that a number of newly invented business models in the digital environment are still evolving; the jury is still out on which of them will succeed. The views expressed on copyright, contract, and trademark law varied about as widely as was possible. John Perry Barlow, for instance, argued that

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† Professor of Law and of Information Management, University of California at Berkeley. Thanks to Robert J. Glushko for his insightful comments on an earlier draft of this Foreword.

1. The program for the symposium is reprinted in the Appendix to this Foreword.

2. For example, an excessively broad scope of copyright protection in the digital environment might impede business models based on linking or indexing material now located on the World Wide Web. See, e.g., Eric Schlachter, *The Intellectual Property Renaissance in Cyberspace: Why Copyright Law Could Be Unimportant on the Internet*, 12 BERKELEY TECH. L.J. 15, 49-51 (1997) (discussing caching and linking).

3. Thanks to Robert J. Glushko for this insight. See also Robert P. Merges, *The End of Friction? Property Rights and Contract in the “Newtonian” World of On-Line Commerce*, 12 BERKELEY TECH. L.J. 115, 116 (1997).

applying copyright law in digital networked environments was hopeless (and in fact counterproductive).<sup>4</sup> In contrast, Mark Stefik argued that content owners could get more, not less, protection in digital environments than in print environments, at least if they used trusted systems technologies effectively.<sup>5</sup> Both at the live Symposium and in this volume, Maureen O'Rourke viewed with favor the idea of contract law displacing copyright law in the licensing of digital content,<sup>6</sup> whereas Robert Merges<sup>7</sup> and Niva Elkin-Koren<sup>8</sup> here articulate reasons why copyright law will still be a needed part of the commercial and regulatory landscape for digital content. They argue that copyright law should preempt license terms when their enforcement would interfere with bedrock copyright principles (although they differ some in the approach that they take toward the form of this preemption).<sup>9</sup> This theme recurs and is carried further in Julie Cohen's article on copyright management systems.<sup>10</sup> At the live Symposium, Mark Radcliffe explained the increasing importance of trademark law in Internet domain name disputes, while Margaret Jane Radin offered some reasons to think that trademarks might recede to unimportance in an Internet future she could imagine.<sup>11</sup>

The speakers at the Digital Content Symposium presented widely differing views of the relative importance of copyright, trademark, contract law, and technology in protecting digital content,<sup>12</sup> as well as a

4. Barlow was the luncheon speaker at the live Symposium. For an article expressing his views on digital copyright issues, see John Perry Barlow, *The Economy of Ideas*, WIREd, March 1994, at 85.

5. See Mark Stefik, *Shifting the Possible: How Trusted Systems and Digital Property Rights Challenge Us to Rethink Digital Publishing*, 12 BERKELEY TECH. L.J. 137 (1997).

6. See Maureen O'Rourke, *Copyright Preemption After the ProCD Case: A Market-Based Approach*, 12 BERKELEY TECH. L.J. 53 (1997).

7. See Merges, *supra* note 3, at 23-26.

8. See Niva Elkin-Koren, *Copyright Policy and the Limits of Freedom of Contract*, 12 BERKELEY TECH. L.J. 93 (1997).

9. See *id.* at 108-13; Merges, *supra* note 3, at 125-26.

10. See Julie A. Cohen, *Some Reflections on Copyright Management Systems and Laws Designed to Protect Them*, 12 BERKELEY TECH. L.J. 161 (1997).

11. Radin pointed out that Bloomingdale's, after all, doesn't need to be situated on Bloomingdale Street in order to be a viable department store business; perhaps the Internet will evolve beyond the model that today would make bloomingdales.com the exclusive property of the store, even if Johnny Bloomingdale wanted it as a site to post his favorite jokes.

12. Schlachter, for example, seems to assume that copyright is the predominate law to apply to digital content (although he also explains why he thinks even it may be less important than many intellectual property lawyers might expect in regulating the distribution of digital content). See Schlachter, *supra* note 2, at 16-17. O'Rourke clearly expects digital licensing to predominate, see O'Rourke, *supra* note 6, at 54, whereas Stefik clearly expects technology to prevail, see Stefik, *supra* note 5, at 138. One could even argue that trademarks will be the chief form of intellectual property in digital commerce because "brand" implies trust. This point is implicitly raised in Schlachter's article in its insistence on the interest of information providers in being attributed as the source of the digital content they distribute. See Schlachter, *supra* note 2, at 31.

variety of alternative conceptions of the copyright regime. If copyright merely provides a set of default rules to enable the formation of markets in literary and artistic works, then saying that contract can override copyright provisions that might favor users is less troublesome.<sup>13</sup> Alternatively, one might view copyright as a kind of social bargain in which authors and publishers must give up some benefits otherwise available from contract law in order to get the benefits of a state-created property right. This view provides more reason for concern about contractual provisions that override rights that users would otherwise have under copyright law, particularly in mass-market transactions, for this smacks of having your cake and eating it too.<sup>14</sup> Much the same tension is evident in relation to technological overrides of copyright rules that creators may embed in digital documents.<sup>15</sup> Finally, participants at the Symposium expressed a range of concerns about the social and cultural implications of digital commerce, especially those that may flow from widespread deployment of technological systems of protection.<sup>16</sup>

For all the diversity of viewpoints expressed at the Symposium, it is worth noting that, on some issues, relative consensus exists among those who write here. A number of authors discuss benefits of using rights management information that future creators may attach to digital information products.<sup>17</sup> Each author has a somewhat different perspective on these benefits, and each perspective has a somewhat different bearing on the formation of appropriate legal protection for the integrity of this information. Even the articles most at odds with each other on substantive issues advance our understanding of the issues by their perceptive articulation of their own and competing positions in a manner that will provide policymakers with a better grasp of the hard choices they face.<sup>18</sup> In addition, readers of this volume will have a more informed perspective about which legal issues should be addressed now in order to enable certain markets to form and which should await the development of a more stable digital content marketplace.<sup>19</sup> They will also come to understand that some legal initiatives, such as those that

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13. See, e.g., O'Rourke, *supra* note 6, at 83.

14. See, e.g., Merges, *supra* note 3, at 121,126-7; Elkin-Koren, *supra* note 8, at 109.

15. See, e.g., Stefik, *supra* note 5, at 155-56; Cohen, *supra* note 10, at 179-83.

16. See, e.g., Schlachter, *supra* note 2, at 34-38; (expressing concern about the social costs of policing digital copyrights); Cohen, *supra* note 10, at 175-78 (expressing concern about the implications of technological protection for fair use). *But see* Stefik, *supra* note 5, at 143 (expressing optimism that trusted systems will make it easier for honest people to pay for works they use).

17. See Schlachter *supra* note 2, at 31-32; Merges *supra* note 3, at 127-28; Cohen *supra* note 10, at 162; Stefik *supra* note 5.

18. See, e.g., O'Rourke, *supra* note 6, at 79; Merges, *supra* note 3, at 128; Cohen, *supra* note 10, at 172-79; Elkin-Koren, *supra* note 8, at 106-13.

19. See, e.g., Schlachter *supra* note 2, at 50-51; Cohen *supra* note 10, at 187.

aim to protect rights management information, need to be approached within a broader policy framework than currently exists.<sup>20</sup>

Finally, several of the articles pull back from the fine details of legal analysis to reflect on the broad impact that can be expected from digital technologies and emerging marketplaces for digital information as, for instance, they interact with institutions which have been built around the print-based information infrastructure,<sup>21</sup> and as they affect and are affected by the culture and social fabric of the countries that become "wired" to the global Internet.<sup>22</sup> As Dan Rosen reminds us, the fast-paced commodification of information in global digital networked environments is a ride on a runaway horse that may take us to some different destinations than we had intended.

The written Digital Content Symposium begins, as the live event did, with an overview of a number of business models with which many firms are currently experimenting in the distribution of digital content.<sup>23</sup> As Eric Schlachter's article shows, some of these business models suggest a more limited role for copyright in emerging digital content marketplaces than, for example, the Clinton Administration's White Paper on Intellectual Property and the National Information Infrastructure did.<sup>24</sup> Schlachter points to a number of ways in which digital content vendors are cross-subsidizing the distribution of "free" information (by means of advertising, sponsorship, and the selling of upgrades or other follow-on services, among others). Communities, he suggests, may become the "secret weapon" of the successful electronic merchant.<sup>25</sup> Yet he also foresees the use of a wide variety of technical measures for myriad purposes. Even those who distribute "free" information will want to be attributed as its provider.<sup>26</sup> Schlachter sees in the White Paper's proposal to protect the integrity of copyright management information a means of protecting this attribution interest,<sup>27</sup> but otherwise argues that

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20. See, e.g., Cohen *supra* note 10, at 183-87 (privacy issues raised by copyright management systems).

21. See, e.g., Robert Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 BERKELEY TECH. L.J. 189 (1997)

22. See, e.g., Dan Rosen, *Surfing the Sento*, 12 BERKELEY TECH. L.J. 213 (1997)

23. See Schlachter, *supra* note 2.

24. See U.S. DEP'T OF COMMERCE, INFORMATION INFRASTRUCTURE TASK FORCE, INTELLECTUAL PROPERTY AND THE NATIONAL INFORMATION INFRASTRUCTURE: THE REPORT OF THE WORKING GROUP ON INTELLECTUAL PROPERTY RIGHTS (Sept. 1995) [hereinafter NII WHITE PAPER].

25. See Schlachter, *supra* note 2, at 29. At a recent industry conference, Web Market West, I saw a number of demonstrations of this principle. Many firms were working to make sites to which people will want to return, in part because of the presence of others with whom they feel some affinity. The firms' hopes are that not only will people return to the site, but that they will also spend money there.

26. See *id.* at 31.

27. See *id.* at 31; NII WHITE PAPER, *supra* note 24, at 235.

legislation aimed at conforming copyright to the needs of the new digital marketplace is premature.<sup>28</sup>

Maureen O'Rourke seems also to perceive a limited role for copyright in the digital future, although for her, copyright will be dwarfed not so much by cross-subsidization but by the desirability of using licenses "not just to modify copyright rights that would otherwise apply but also to create private copyright through contract in instances in which the public law would deny copyright protection altogether."<sup>29</sup> Others might assert that copyright preemption does not apply to digital licenses because a licensing agreement is not "equivalent" to an exclusive right of copyright because of the extra element of an agreement.<sup>30</sup> Or they might point to the very different natures of contract and copyright law, the former class of rights generally being good only against the parties who agree to them while the latter confers rights that are good against the world.<sup>31</sup> O'Rourke invokes these themes, but opines that the problem of preemption goes deeper than this.<sup>32</sup> She first articulates two competing perspectives about copyright law which largely underlie the differing preemption analyses in the opinions in the two *ProCD v. Zeidenberg* decisions:<sup>33</sup> the "freedom of contract" perspective that would find no contract preemptable and the "public domain" perspective that would find preemption whenever contracts were crafted to evade user rights under copyright law. O'Rourke then sets forth criteria for the rare instances when she thinks preemption might appropriately be invoked without undue interference with freedom of contract principles.<sup>34</sup>

If O'Rourke's views lie near the "freedom of contract" end of her preemption spectrum, Niva Elkin-Koren is very near the "public domain" end of that spectrum.<sup>35</sup> Elkin-Koren views with dismay the prospect of ubiquitous vendor-centric licenses displacing the traditional copyright balance in the digital environment. She notes that this practice has even been spreading recently to traditional works in traditional media.<sup>36</sup> If Zeidenberg can be held to the use restriction that came with the CD-ROM he bought, Elkin-Koren fears that print publishers will expect to be able to enforce license restrictions such as those that forbid the reproduction of

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28. See Schlachter, *supra* note 2, at 50-51.

29. O'Rourke, *supra* note 6, at 54.

30. See 17 U.S.C. § 301 (1994) (requiring an equivalence between a state-created right and one or more of the exclusive rights of copyright before federal preemption of state law can be invoked).

31. See, e.g., *ProCD v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996).

32. See O'Rourke, *supra* note 6, at 77.

33. *ProCD, Inc. v. Zeidenberg*, 908 F. Supp. 640, 645 (W.D. Wis.), *rev'd*, 86 F.3d 1447 (7th Cir. 1996) *discussed in* O'Rourke, *supra* note 6, at 77.

34. See *id.* at 91.

35. See Elkin-Koren, *supra* note 8, at 102 n.46.

36. See *id.* at 95.

any part of a book without prior written permission, the redistribution of one's copy, or the reading of a book more than once. Such restrictions aim to do away with the fair use, first sale, and limited exclusive rights provisions of copyright law.<sup>37</sup> If merely using the information product signals assent to the license, Elkin-Koren argues that "[t]he outcome will be very similar to the effect of a right in rem,"<sup>38</sup> that is, to an exclusive right against the world such as copyright has historically conferred. Because she views the copyright monopoly as "contingent, instrumental, and limited to the level necessary to provide incentives,"<sup>39</sup> she asserts that "[it] does not simply define the rights of the copyright owners, but instead draws the boundaries between privately and publicly accessible information."<sup>40</sup> Elkin-Koren's article goes on to discuss some social costs she perceives to flow from a disruption of these boundaries.<sup>41</sup>

Robert Merges foresees less displacement of copyright by licensing in the digital environment than Elkin-Koren fears.<sup>42</sup> Property rights will be needed in cyberspace, he argues, to enable rightsholders to take action against third parties who obtain access to a digital information product without having entered into the license with which the product is normally distributed. The third party access problem could be resolved, of course, by mounting yet another assault on privity, but Merges strongly objects to such an erosion of the boundaries between property and contract. As he aptly puts the point, "there is stretching and then there is breaking."<sup>43</sup> On preemption issues, Merges falls somewhere between O'Rourke and Elkin-Koren, although seemingly closer to O'Rourke's end of the spectrum. In general, he thinks intellectual property owners should be free to craft licenses as they see fit, subject only to limitations deriving from constitutional norms or serious third party harm.<sup>44</sup> Yet he repeats his objections to "private legislation" that can arise from ubiquitous use of licensing terms that, if enforced, would interfere with purposes

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37. See 17 U.S.C. §§ 107 (fair use), 109 (first sale), 106 (exclusive rights provisions) (1994).

38. Elkin-Koren, *supra* note 8, at 104.

39. *Id.* at 100.

40. *Id.* at 101.

41. See *id.* at 111-13.

42. See Merges, *supra* note 3, at 118-20, 126.

43. *Id.* at 120. While Merges does not explicitly use this example, by extension his article would characterize as a stretch to say that Zeidenberg was bound by the license included with the CD-ROM he purchased when he loaded the CD-ROM on his machine, but it would be breaking contract law to say that anyone who got access to the CD-ROM could be bound to the license terms by using the product. Cf. Elkin-Koren, *supra* note 8, at 103 (expressing concerns that even a stranger who did not purchase, but found and used, the ProCD CD-ROM could be bound by the license because of the minimal assent that the ProCD case seems to require).

44. See Merges, *supra* note 3, at 126-27.

underlying federal intellectual property law.<sup>45</sup> His article also explores alternative rationales for fair use, now that the market failure rationale (which has been the rage in recent years<sup>46</sup>) seems to be subsiding in view of the rise of new institutions, such as the Copyright Clearance Center, that facilitate low-transaction-cost licensing.<sup>47</sup> Merges also views technical protection systems and copyright management information (including that with self-reporting features) as desirable developments because of their potential to facilitate low-cost transactions in digital content, thereby letting new markets for this content get off the ground.<sup>48</sup>

Technical systems of protection for copyrighted works are, of course, still in relatively early phases of development and deployment. For this and other reasons, they are somewhat foreign to many intellectual property lawyers. However, because some systems are already deployed and more will be so in the near future, the well informed intellectual property lawyer should invest in learning about these systems in order to adequately advise clients about their protection options.<sup>49</sup> Mark Stefik of Xerox's Palo Alto Research Center, one of the leading technical experts in this new field, here provides the reader with a basic understanding of trusted-systems technologies that his company and others are developing.<sup>50</sup> He also explains several aspects of the digital property rights language he is developing to encode the terms and conditions of authorized use of digital information and then to embed these terms in the documents containing the information.<sup>51</sup> If a user tries to employ a trusted system object in a manner for which the user hasn't paid, Stefik explains, the trusted system simply will not execute the command. While Stefik is generally enthusiastic about the prospect of trusted systems' displacing copyright and contract law, he proposes establishing a quasi-regulatory entity to be known as the Digital Property Trust to protect the

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45. See *id.* at 126 (citing Robert P. Merges, *Intellectual Property and the Costs of Commercial Exchange: A Review Essay*, 93 MICH. L. REV. 1570 (1995)). As before, Merges asserts that these should be preempted, although he now qualifies his position in two respects. *Id.*

46. See, e.g., Wendy J. Gordon, *Fair Use as Market Failure: a Structural and Economic Analysis of the Betamax Case and its Predecessors*, 82 COLUM. L. REV. 1600 (1982).

47. See Merges, *supra* note 3, at 132.

48. See *id.* at 116-17.

49. At the Symposium, I suggested that intellectual property lawyers should become interested in these protection systems because they might very well put these lawyers out of business. See generally Schlachter, *supra* note 2, at 38-44 (surveying a range of these techniques).

50. See Stefik, *supra* note 5, at 139-44.

51. See *id.* Among other things, Stefik shows how this digital property rights language can be used to bring about the technical equivalent of the first-sale rule of copyright law by disabling someone's copy when he or she lends it to a friend and reviving it when the friend's copy has ceased to operate. See *id.* at 148. As Julie Cohen notes, this action will occur only when a publisher chooses to encode this lending right for its works which the publisher need not do. See Cohen, *supra* note 10, at 177.

public interest and to fend off the interoperability and patent wars that threaten to impede widespread deployment of trusted system technologies.<sup>52</sup>

With the aid of an apt quotation from cyberlaw scholar Larry Lessig, Julie Cohen implicitly agrees with Stefik and Merges that "[c]ode is an efficient means of regulation. . . . One obeys these [technical] laws as code not because one should; one obeys these laws as code because one can do nothing else. . . . In the well implemented system, there is no civil disobedience."<sup>53</sup> Cohen is encouraged by Stefik's recognition that trusted systems raise enough serious public policy concerns that he calls for creation of a regulatory body to deal with public interest issues that the marketplace and technology alone cannot adequately work out.<sup>54</sup> She would deal with these issues, at least in part, through copyright legislation to protect copyright management systems and rights management information in accordance with the WIPO Copyright Treaty concluded in Geneva in December 1996.<sup>55</sup> She contends that "[c]opyright owners cannot be prohibited from making access to their works more difficult, but they should not be allowed to prevent others from hacking around their technological barriers. Otherwise, the mere act of encoding a work within copyright management systems would magically confer upon vendors greater rights against the general public than copyright allows."<sup>56</sup> She offers a number of trenchant critiques of existing legislative proposals, as well as some alternative statutory language that would better maintain the balance in copyright law.<sup>57</sup>

Maintaining continuity and balance in the law is also of concern to Robert Berring, whose article explores the impact that consolidation in the legal publication marketplace and that digital technologies are having on the stability of US legal institutions and the credibility of American law.<sup>58</sup> Printed legal publications have long lain at the core of the American conception of law. Even as online databases have gained acceptance, they have still relied on the printed volumes as the final authoritative source. For a variety of reasons, change in this reliance was inevitable,

52. See Stefik, *supra* note 5, at 156. Stefik himself is seeking patents for some of his trusted systems ideas.

53. Cohen, *supra* note 10, at 182 (quoting Lawrence Lessig, *The Zones of Cyberspace*, 48 STAN. L. REV. 1403, 1408 (1996)). Cohen does not address the question of whether this implies that programmers should be trained in legal rules and only encode that which the law permits.

54. See *id.* at 183 n.96 (citing Stefik, *supra* note 5).

55. World Intellectual Property Organization, *Provisional Treaty on Protection of Literary and Artistic Works*, Arts. 11, 12, 53 PAT. TRADEMARK & COPYRIGHT J. 155 (1997). See generally Pamela Samuelson, *The U.S. Digital Agenda at WIPO*, \_\_ VA. J. INT'L L. \_\_ (forthcoming 1997).

56. Cohen, *supra* note 10, at 178.

57. See *id.* at 163-78.

58. See generally Berring, *supra* note 21.

and Berring reports that “[f]or old models of legal information, 1996 was the year the music died.”<sup>59</sup> While the reader should look to Berring’s article for full explanation of this remark, it is interesting to note that he perceives with some skepticism the “reform” of vendor-neutral citations for legal information.<sup>60</sup> As beneficial as these new citation forms may be in fostering competition in the legal information market, they may also introduce new credibility problems.<sup>61</sup> When multiple providers supply CD-ROMs of the decisions of a particular state court, whose version is definitive if they differ in minor (let alone major) respects? New institutions will no doubt arise to lend credibility and authority to legal information, but we are in for a difficult transition in the meantime. Berring also points out why public access to legal information may become both better and worse in the digital environment.<sup>62</sup>

Dan Rosen’s article on the Japanese reaction to the Internet explores another kind of digital content transition anxiety.<sup>63</sup> Rosen points out that “[t]he unspoken assumption [of the Digital Content Symposium] was that the Net is there to be used, even exploited, but not restricted.”<sup>64</sup> His article shows how thoroughly American has been the debate thus far about how to optimize development of the Internet to enable electronic commerce. Other cultures, and particularly Japan, tend to regard this kind of fast-paced, open-ended, spontaneous, market-driven, multiplexed approach to development to be undesirable.<sup>65</sup> Because of profoundly different values, other cultures may not embrace the new digital information products as soon or as completely as many American entrepreneurs may hope. To the extent that American firms succeed in establishing global markets for their digital content products, Rosen points out reasons to be concerned about the unintended consequences that might flow from such successes.<sup>66</sup> Rosen uses some developments related to the Japanese institution known as sento (public baths) as a metaphor for how Japan may cope with the Internet, which he describes as “the greatest sento of them all.”<sup>67</sup>

In reflecting on the rich brew of ideas that the Digital Content Symposium has brought into being, I am grateful to Berkeley Technology Law Journal’s editor-in-chief Laurel Jamtgaard for the opportunity to

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59. *Id.* at 190.

60. *See id.* at 201.

61. *See id.* at 202.

62. *See id.* at 203-09; *see also* Pamela Samuelson, *The Quest For Enabling Metaphors For Law and Lawyering In the Information Age*, 94 MICH. L. REV. 2029 (1996).

63. *See Rosen, supra* note 22, at 213.

64. *Id.* at 215.

65. *See id.* at 224-25.

66. *See id.* at 221-22.

67. *Id.* at 226, 229.

write this introduction and for the hard work and positive energy that she and other Journal members, including Mike Hagele, Mary Heuett, Jamie Nafziger, and Gabe Wachob, contributed to the organization of the live event and this special issue. Thanks also go to Robert Merges and Peter Menell, Co-Directors for the Berkeley Center for Law and Technology/Intellectual Property, for their efforts relating to the conference, as well as to the Center's law-firm sponsors for their support. Pat Murphy of the Haas School and her outstanding staff of conference planners also deserve much thanks. Last, but not least, I want to thank the speakers at the Digital Content Symposium and the contributors of the articles in this issue, without whom the content in this volume would not have reached Berkeley Technology Law Journal's readers.<sup>68</sup>

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68. A final tip of the hat to Denise Caruso for pointing out that the term "digital content" commodifies expression and depersonalizes the creator and the cultural context of the work.

**Appendix: Program for the Digital Content  
Symposium, held November 8, 1996**

**DIGITAL CONTENT:  
NEW PRODUCTS AND NEW BUSINESS  
MODELS**

**FRIDAY, NOVEMBER 8, 1996**  
ANDERSEN AUDITORIUM, HAAS SCHOOL OF BUSINESS

**9:00 — 9:10 Welcoming Remarks**  
Laurel Jamtgaard, Editor-in-Chief, *Berkeley  
Technology Law Journal*  
Robert Merges, Director, Berkeley Center for Law &  
Technology

**9:10 — 10:30 Session I: Overview of Business  
Models  
(The Advertising Model)**

**Presenters:**  
Curt Blake, Starwave  
Nat Goldhaber, CyberGold, Inc.  
Denise Caruso, New York Times  
Charles Stanford, ABC Television  
Michael Tchong, I/Pro

**Moderator:**  
Robert Merges, UC Berkeley School of Law

**Discussion Panel:**  
James Kennedy, Electronic Arts  
Heather Rafter, Digidesign  
Joel Riff, Fenwick & West  
Hal Varian, UCB School of Information  
Management & Systems

**10:30 — 10:50 Break**

**10:50 — 12:00 Session II: Overview of Business Models (Other Models)**

**Presenters:**

William Nisen, McGraw-Hill  
Nathan Benn, Picture Network International

**Moderator:**

Robert Merges, UC Berkeley School of Law

**Discussion Panel:**

James Kennedy, Electronic Arts  
Heather Rafter, Digidesign  
Joel Riff, Fenwick & West  
Hal Varian, UC Berkeley School of Information Management & Systems

**12:15 — 1:45 Lunch — Wells Fargo Room, Haas School of Business**

**Guest Speaker**

John Perry Barlow, Electronic Frontier Foundation

AFTERNOON ANDERSEN AUDITORIUM, HAAS SCHOOL OF BUSINESS

**2:00 — 3:30 Session III: Electronic Contracting for Digital Content**

**Presenters:**

Peter Boyle, A.S.C.A.P.  
Judith Klavans, Columbia Digital Library  
Irvin Muchnick, Publication Rights Clearinghouse  
Raymond Nimmer, University of Houston Law Center  
Raymond Ocampo, Oracle Corporation  
Maureen O'Rourke, Boston University School of Law

**Moderator:**

Pamela Samuelson, UC Berkeley School of Information Management and Systems & School of Law

**Discussion Panel:**

Henry Barry, Wilson, Sonsini, Goodrich & Rosati  
Robert Berring, UC Berkeley School of Law  
Robert Merges, UC Berkeley School of Law

**3:30 — 3:50 Break**

**3:50 — 5:00 Session III continued**

**5:30 — 7:30 Reception**  
Goldberg Room, Boalt Hall School of Law

**SATURDAY, NOVEMBER 9, 1996**

ANDERSEN AUDITORIUM, HAAS SCHOOL OF BUSINESS

**9:00 — 10:20 Session IV: Synthetic Images, The  
Right of Publicity, And On-line  
Trademarks**

**Discussion Panel:**

Nathan Benn, Picture Network International  
Mark Radcliffe, Gray Cary Ware & Friedenrich  
Joseph Beard, St. John's University School of Law  
Tom McCarthy, University of San Francisco School  
of Law  
Margaret Jane Radin, Stanford Law School

**Moderator:**

Robert Merges, UC Berkeley School of Law

**10:20 — 10:40 Break**

**10:40 — 12:00 Session V: Technical Protection for  
Digital Content:  
Electronic Rights Management  
Systems**

**Industry Experts:**

Jeffrey Lotspeich, IBM  
Mark Stefik, Xerox PARC  
Louise Velazquez, Interval Resources  
Robert Weber, InterTrust

**Moderator:**

Peter Menell, UC Berkeley School of Law

**Discussion Panel:**

William Coats, Brown & Bain

Lori Fena, Electronic Frontier Foundation

Paul Geller, University of Southern California  
School of Law

Ronald Laurie, McCutchen, Doyle, Brown &  
Enersen

Pamela Samuelson, UC Berkeley School of  
Information Management and Systems & School of  
Law

**Computer & Internet Access**

Computer Lab, Haas School of Business

AVAILABLE DURING CONFERENCE HOURS