

December 13, 2019

The Honorable Thom Tillis
113 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ben Cline
1009 Longworth House Office Building
Washington, DC 20515

The Honorable Ted Deutch
2447 Rayburn House Office Building
Washington, DC 20515

The Honorable Martha Roby
504 Cannon House Office Building
Washington, DC 20515

Dear Senator Tillis, Representative Cline, Representative Deutch and Representative Roby,

We thank you for expressing many of the same concerns that we have voiced since the American Law Institute's (ALI's) Copyright Restatement project began more than four years ago. While we will not review all the points we have raised in connection with each Restatement draft,¹ we will highlight a few that echo those in your recent letter to the ALI.

Like you, we are skeptical of the need for a Restatement of a federal statute, and particularly troubled by the ALI's refusal to articulate a methodology for such a Restatement. As we have noted in our comments to the ALI, the relationship of the "black letter" to the statute has been highly erratic, with different drafts sometimes adopting statutory text, but inaccurately paraphrasing other text, entirely omitting some text, and occasionally inventing standards that do not exist in the statute.

We have also expressed deep concerns about the apparent bias in the drafts already submitted. For example, the drafts as a whole manifest a belittling perspective on copyright protection. They also have dismissed or ignored relevant leading case law that does not support the Reporters' doctrinal prefer-

¹ Professor Jane Ginsburg is an Adviser to the Restatement Project, and June Besek is a Liaison from the ABA Section of Intellectual Property Law (IPL). They submitted comments to ALI on every draft of the Restatement that ALI has produced (although Besek participated in the preparation of the comments in her individual capacity, not on behalf of the ABA IPL Section). Their comments are dated 21 December 2015; 11 January 2017; 4 December 2017; 12 January 2018; 10 October, 2018; 4 March 2019; and 10 October 2019. We are happy to provide the full text of these comments if you would find them useful.

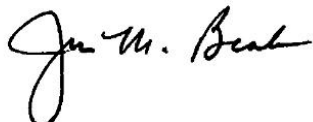
ences. You noted in your letter that the Reporters have largely disregarded the comments of the Copyright Office, which has been critical of this Project. Like you, we believe the Office's expertise in copyright law deserves fuller recognition.

We will be interested in the ALI's responses to all of the Congressional questions, and hope your letter will yield positive results.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Ginsburg". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Jane C. Ginsburg
Morton L. Janklow Professor of Literary and Artistic Property Law, Columbia Law School
Faculty Director
Kernochan Center for Law, Media and the Arts

A handwritten signature in black ink, appearing to read "June M. Besek". The signature is cursive and somewhat compact, with a distinct loop at the end.

June M. Besek
Executive Director
Kernochan Center for Law, Media and the Arts

A handwritten signature in black ink, appearing to read "Philippa S. Loengard". The signature is highly stylized and cursive, with a large, prominent initial 'P'.

Philippa S. Loengard
Deputy Director
Kernochan Center for Law, Media and the Arts