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Previewing [OnCopyright 2010](#) Interview With Bill Burger

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KENNEALLY: We're getting ready to watch a collision of ideas, but that's not a documentary about the Cold War. It's a program we call *OnCopyright2010*. And joining me today on *Beyond the Book*, we have Bill Burger, who is the producer. Bill, it's good to see you.

BURGER: Thank you, Chris. Thanks for inviting me. It's a pleasure to be here.

KENNEALLY: It's a pleasure to have you here, and we're looking forward to *OnCopyright2010*, which is coming up in March, and we want to give you a chance to preview it for our audience and tell them about what to expect. And I guess first of all, it's a question about the title itself. What are the various sides, and what's at stake in this collision of ideas around copyright?

BURGER: Well, a great deal is at stake, I think, both in terms of the businesses that are engaged in the various creative arts that involve copyright, as well as for the users of content and the individuals who create it. So there's a lot at stake. It has been an area, I think, of increasing friction and tension over the last 10 to 15 years – really, increasingly so with the onset of the Internet and the ability for people to copy, make perfect copies of content in digital formats, and to share that in new ways, and to remix it in new ways and make use of it in new ways.

So it has created a certain tension, and I think a collision of visions and ideas, as the conference title suggests.

KENNEALLY: Right. And your background, Bill, we should tell people, is as a journalist and a marketing person, and you were the first organizer for *OnCopyright2008*.

BURGER: Yes.

KENNEALLY: A question I have is, it's only two years, but a tremendous amount has happened in those two years – in the book publishing world, in the newspaper industry. Do you think the positions have hardened, or are we coming closer together to some kind of understanding?



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BURGER: Well, you're right. A lot has happened in two years. And sadly, I don't think there has been, really, much change in opinion on the two sides, and it might be even more than two sides. It's quite a multi-faceted discussion that takes place.

I think at the margins, there have been a couple of areas where people have come to a kind of working agreement, if you will. I think one example of that is that the movie studios are a bit more willing to let a truly transformative remix, perhaps, of a movie, of certain segments of a movie, or scenes of a movie, to exist. They used to go over it – after that quite quickly. And I think now that they realize that that's not really competitive in any way with their product, and it is kind of a new act of creativity – so I have seen, again, at the margins, some more flexibility on the behalf of certain rights holders. But people still have their feet pretty firmly planted in concrete on this one.

I just want to say that while a lot has changed, a lot of things do remain the same as well. I mean, these are kind of philosophical differences, and so in our increasingly fractured political society, if you will, the same holds true here. And so, there are not a lot of discussions and meeting of the minds where people are kind of bending and coming together into some new agreement.

KENNEALLY: And we're going to sum it up. I think of the very famous quote by Stewart Brand, the one that people only get half right, usually, which is that information wants to be free, and then he continues to say that information also wants to be expensive. And those seem to be the two sides here, again, if we're going to make it into an either/or proposition.

BURGER: Yeah, that's right. I mean, I kind of – that's an interesting quote, because on the one hand, there's the meaning of free. There's free beer, and there's free, in terms of accessibility, the ability to get to it and find it. We've seen a – right now, a lot, it's free in both cases, in many ways.

Of course, to the whole thing, I say information doesn't really want to be anything. People want things. Information is pretty agnostic about that. Some people do want information to be free. Some people certainly want it to be expensive if they're producing it and making a living from that. But I think that all models will exist in the future, and that will certainly be one of the things we talk about at the conference.

KENNEALLY: Well, we can anticipate a lot of thoughtful discussion, and why don't we tell people how the program is broken down? It's a whole day, in New York, at the



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Union League, and you start off with technology. What's the discussion going to be about there?

BURGER: Well, just to step back for a second, the idea of the conference – and this is really the case with the first one – is that there are many conferences about copyright. And generally, they are conferences where a lot of lawyers get together and talk in a fairly detailed way that only lawyers can fully appreciate about what's going on with copyright law.

My thought, two years ago, and it really has held true this time, is that copyright is about many more things than the law. And in fact, the changes that we're seeing, the challenges to copyright law, are coming from many quarters of our society. One is that new technologies, largely Internet-based, have made it easier for people to create and share content, and has challenged a lot of the precepts of – or assumptions, really, that copyright law was built on when the last law was passed in 1976.

Similarly, social mores are changing. People are interacting with content differently. They have different sets of experiences and assumptions and beliefs around how they should interact or create content. And so, we have these other forces – and the arts is yet another, and that will be the final session.

So people are, in artistic ways, creating content in new ways, and again, made possible in some cases by technology, and perhaps even encouraged by these changing social mores.

So these four forces – technology, society, law, and the arts, all really do come together, and it's the interplay of these forces, I think, that makes the conference so interesting – in many ways, the national debate around copyright so interesting.

KENNEALLY: And I really applaud the idea that we're trying to bring these groups together, because the notion of artists and attorneys talking to each other is one that just seems incongruous, really.

BURGER: Well, it does, but what was interesting is that the last time, the arts panel was, in many ways, the liveliest. And there were no lawyers on the panel, but it was – the lawyers in the audience were certainly asking a lot of questions of the artists, and the artists were asking during the law panel questions of the lawyers.

So you would think that there wouldn't be a lot here, but I think increasingly, artists are aware of the law. Not always. Some of what they do, they do because they're



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just driven to create something, and they're not thinking about the law. But in other cases, they're very attuned to what the law says, and in some cases, they're making very conscious challenges to the law. And so, as artists, they have a lot to say about copyright.

KENNEALLY: Well, we're talking today on *Beyond the Book* with Bill Burger, who's the producer of *OnCopyright2010* coming up in March in New York City. It is, as we said, an all-day program, and so people can expect to really be immersed in this discussion, and you've talked about how it's broken down in four sections.

It opens up, though, we should say, with a talk with Bill Patry, who is very well known indeed to people who know anything about copyright. Tell us who he is, and what we can expect to hear from him.

BURGER: Bill certainly is kind of a legend in the copyright – in copyright areas. He's currently the copyright counsel, chief copyright counsel to Google. He has been an academic in much of his career. He worked at the U.S. Copyright Office in Washington. And he is probably the most prolific living scholar on copyright. He has a treatise that many lawyers refer to, another long treatise on fair use, and he has a new book which came out in 2009 called *Moral Panics and the Copyright Wars*.

What's interesting about this book, it's really geared more for the general reader, so you do not need to be a lawyer to read and appreciate this book, and so I think –

KENNEALLY: Which is a relief, I think, for most of us.

BURGER: I think it's a relief for most of us, not being a lawyer myself. But it's a new book, it's quite provocative in many ways, and so we're starting out with an interview with Bill Patry being conducted by Ben Sheffner, who is an attorney, a copyright attorney, and a quite prolific blogger as well.

And so that will be an interesting kind of half hour discussion to kick off the day. I think it will set some of the themes that we'll come back to during the day.

KENNEALLY: And given what a lot of people, if I can say, in the copyright community think of Google, to have Google open up a copyright program itself tells you this is something different.

BURGER: Well, yeah. I mean, Google is a terrifically disruptive force, not only for publishers, but really, in the economy at large – certainly in the advertising industry,



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for publishers, for record labels and studios. And so, having Bill there, I think, is wonderful for the conference. He's a real draw. I think he'll have a lot to say, and I'm looking forward to it.

KENNEALLY: Great. And the technology section is the first of the four, and that is subtitled, *The Ultimate Change Agents*. And the question I was thinking about for you is, the way that technology, up to a point, has been the kind of servant of society, and at some stage, we are threatened, or feel threatened by technology, and sort of worried that it might turn the tables on us.

Talk about that, and who's going to be on that?

BURGER: Well, I think people's reactions to technology are complex. It certainly threatens some segments of our society and our economy, but it's also, at the same time, been a tremendous agent for growth and invasion and the kinds of things that we're able to do today.

So the technology session will really look at some of the technologies and some of the types of companies that are doing things now, either through truly new technologies or new applications of technologies and new business models, relating to content generally, and how this can drive new thinking and change around content.

And you know, there are many examples, when we look around. Google is certainly a very prominent example, but there are little companies starting up and doing some amazing things. I mean, YouTube – think of how YouTube has changed the way we consume content. Think of how even iTunes has really changed the way that we consume music, going from the album or CD paradigm to the single song paradigm.

So – and this, pretty quickly, these new technologies can change our behavior and our thinking about how we should interact with content. You can look at the Kindle, you can look what's happening with eBooks or the iPad that Apple has just announced, and you can imagine looking at one of these devices, especially the new Apple iPad, and think some years down the line how publishing will change.

And so, it's not always, in this case, a clear challenge to copyright, although in many cases it is, but it's really a challenge to the status quo around these industries.

KENNEALLY: And for the companies, the industries that rely on copyright, it's a challenge to the business models that they have.



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BURGER: That's right. And I think one of the really interesting things that we'll talk about is, copyright as a business lever. I mean, there are a lot of ways to think about copyright. There's the way to think about it as an incentive for individuals to create, whether they're writers, or songwriters, or movie directors.

But copyright is also used as a lever by large copyright owners, generally large media companies, to protect business models. And that's, I think, a really controversial area then, and one that we will delve into, because that's not necessarily how copyright was envisioned when it started out. But the big defenders of copyright generally are large media companies today. And I know in our law session, that will be a topic that really comes out.

KENNEALLY: And it also makes a good segue for the section on society, because there, that's subtitled *Big Media Struggle*. What are we going to get there?

BURGER: Well, I think we're going to hear from a number of interesting people there. We have the general counsel of the Associated Press, Sri Kasi. We have Gordon Crovitz, the former publisher of the *Wall Street Journal*, who's now the co-founder of an organization called Journalism Online. That's a new company, as I said, that is trying to create technologies to help primarily newspapers and other news providers monetize their content, create more opportunities to charge for content.

So as we've seen the rise of the aggregators, particularly in the news space, we've certainly seen a reaction to that from traditional publishers. The Associated Press has been quite vocal. Rupert Murdoch has been very vocal. And I think that we're really setting up there that discussion of the tension between news creators and aggregators, and how copyright plays into that dynamic.

KENNEALLY: Right. And I'm wondering, too, how it's going to be. You can almost count on – this is something that's changed since 2008. You can count on a portion of the audience tweeting about this, and there will be bloggers, and there will be a lot of activity that will be going on online. So even if people can't be there in New York for the program, they can probably follow along in a variety of ways.

BURGER: That is really true. That is a – you know, Twitter, two years ago, didn't really exist.

KENNEALLY: Right.



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BURGER: And live blogging has certainly grown tremendously in the last couple of years. So yes, there will be a hashtag set up. There will be the ability for people to follow it.

We also do record, video record the conference, and we will be putting that up on the website as soon as we can after the conference.

KENNEALLY: Well, yeah, and I'm thinking, big media and, if you will, little media will be in play at the conference.

BURGER: That's right. That's right.

KENNEALLY: The section on law is subtitled, *Evolution or Entropy*. Big ideas there.

BURGER: Yeah, it is a big idea. Sometimes people have asked me what that's about, and my short way of explaining it is that given these large social changes with technology and social expectations, it puts pressure on the law. And the question is, is the law flexible enough to accommodate some of these – the new thinking? Or is the law increasingly so rigid, because of the large vested interests that have a real say in Washington, the way Washington is constructed today, is the law so rigid that it can't bend, or is the law flexible enough that it can change over time to accommodate kind of the new reality, if you will.

So really, it's a question of, can it evolve, or is it a state of entropy, where things really just kind of stop changing. And I think that's a danger, because I think the world is changing. We – as a nation, we write laws to accommodate that in many areas. And so I think it's an important area of discussion for copyright.

And we will really focus there on some calls to – for change in copyright law. We have a number of attorneys on this panel. Jessica Litman is a prominent scholar from the University of Michigan. She has a draft paper out now entitled, *Real Copyright Reform*, where she's calling for significant change in copyright law, something that in practical terms is a little difficult to imagine in this environment.

We have an attorney named David Marburger, who is a media attorney in Cleveland, and he and his brother, who's an economist, have proposed some changes to copyright law, really, designed to help newspapers and news gathering institutions.

So there are calls for change coming from the so-called copy left, as well as kind of from the rights holder perspective. And to balance that out, and to give some



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perspective, Lois Wasoff will be on the panel. Lois was a member of the Section 108 Study Group. A couple of years ago, there was an effort to modify copyright law in the orphaned works area.

KENNEALLY: And we should tell people who aren't copyright attorneys or pretend to be one at work, like myself, what Section 108 is.

BURGER: Section 108 is the area of copyright law that fundamentally – the area was around orphaned works. So there are a tremendous number, as the length of copyright term has extended, and it's quite long now. There are many works that are still under copyright law, but no one knows who really owns the rights to them – the author or the songwriter is dead, their families are disperse, and so – but they are needed to use these works. These works are still vital in many cases.

KENNEALLY: And those are the orphaned works.

BURGER: And those are the orphaned works. You just don't know who owns them. The owner is gone, so they're out there without an owner, and the question is, well, how can you still practically use these works if you can't find out who to gain a license for, or get some permission to use the work?

So the Section 108 Study Group – and that's kind of a technicality, it's Section 108 of the copyright law – they were investigating some reform to the law to make it easier for users to use these orphaned works. And unfortunately, the recommended reforms, which did produce legislative proposals – there were laws introduced, but they were never passed. There was real opposition to this from some quarters, and I think it's symptomatic of the kind of gridlock over copyright that exists in Washington.

So Lois will be able to come to the table – Lois Wasoff, and talk about her recent and real life experience trying to enact – or have enacted even a modest, in many ways sensible change to the law, but the difficulty that that came up against.

KENNEALLY: Literally war stories from Lois there.

BURGER: Absolutely. Absolutely.

KENNEALLY: And the final section is called *Art – Creativity and Appropriation*. And that suggests a lot of different things as well. Who will be on that?



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BURGER: So we have four artists on that panel. We have David Hoffman, who is a documentary filmmaker, and people who follow documentaries know that they really can only exist by using a lot of old footage, and interviews, and music. And the clearance of rights, and even the finding of the film, can be very, very difficult.

KENNEALLY: And very expensive.

BURGER: And very expensive. And David has some – David has made many documentaries, and has some interesting stories to tell about that process around the making of his most recent documentary, and the cost of doing that, and really, because of that, the fact that a young filmmaker could probably never have made that movie. And he was only able to do so because he had a track record and was able to attract some investment.

KENNEALLY: And to give an illustration to how much has changed, *Eyes on the Prize*, the famous documentary about the civil rights movement, which was produced in the 1980s, sort of lived in copyright limbo for quite a long time, because –

BURGER: It sure did.

KENNEALLY: – what, the rights they had acquired in 1980 had to be renegotiated within the last decade, and the price had gone through the roof.

BURGER: It was really only through extraordinary efforts that they were able to regain the rights that they needed, so that that documentary could be, once again, put into the market, so that (overlapping conversations; inaudible) – schools.

KENNEALLY: Couldn't be seen.

BURGER: Could not be seen.

KENNEALLY: Right. Right, right. And you also have an interestingly named character, somebody from Australia, Pogo.

BURGER: Yes, Pogo. So, Pogo is the name that an artist named Nick Bertke (sp?) has taken. He's from Perth, Australia, a young man from Perth, and we're really fortunate that he's coming. He can – his work can be seen on YouTube. He does some quite fascinating – and from a copyright standpoint, some rather challenging work, remixing both the audio and video from major motion pictures, and creating in effect, these new compositions that are three, four, five minutes long.



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Quite interesting – 100% taken from existing, in-copyright works, but in a way that is quite transformative. I think it has the market effect of making people want to see the original work – it certainly has done that for me. And I think the studios have certainly taken note of what Pogo is doing. And I think this is an example where most of them have decided that this is OK. You know, they haven't maybe done so in a formal way, but they're choosing to look the other way, because they really don't see this as a threat.

So Pogo is going to talk about his ideas around creativity and the art of appropriation from his point of view.

In addition to that, we have an artist, Barbara Bloom, who is quite a prominent artist in fine arts circles, and much of her work also involves the use of borrowed works, if you will. And she incorporates those in a number of ways, either in sculpture or painting.

And then finally, we have David Shields, an author of about ten books. I'm quite a fan of his work, and he has a new book coming out in February, entitled, *Reality Hunger*. And *Reality Hunger* is – it's a fascinating book, it's called a manifesto. And it is really a challenge – it's a challenging read, in many ways, because when you're reading the book, you don't really know what words are David's, or what words belong to someone else.

And so he has some interesting things to say about his own creative process, but also about the interaction with the lawyers at Knopf, which is the publisher of this book, and the difficult conversations they had around copyright and around attribution, and I –

KENNEALLY: And you had a section, I think,(overlapping conversations; inaudible).

BURGER: I do. There's an appendix to the book, which he really did not want to include. The lawyers from Knopf required, in publishing this book, that he list, effectively, all of the sections and the attribution to the little snippets that are in the book.

And I just want to say a couple of – just – this is – I really loved reading this. This is from the book, *Reality Hunger*.

KENNEALLY: And we're literally starting at the back of the book.

BURGER: We're starting at the back of the book. This book contains hundreds of quotations that go unacknowledged in the body of the text. I'm trying to regain a



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freedom that writers from Montaigne (sp?) to Burroughs (sp?) took for granted and that we have lost. Your uncertainty about whose words you've just read, it's not a bug, but a feature. A major focus of *Reality Hunger* is appropriation and plagiarism, and what these terms mean. I can hardly treat the topic deeply without engaging in it.

And then he instructs the reader, he says, however, Random House lawyers determined that it was necessary for me to provide a complete list of citations. The list follows. If you would like to restore to the book – restore this book to the form in which I intended it to be read, simply grab a pair of sharp scissors, or a razor blade or box cutter, and remove pages 210 to 218 by cutting along the dotted line. And in fact, Knopf has provided a dotted line in that section of the book, so they have, in a way, cooperated with him.

And then finally, and this is really the point, who owns the words? Who owns the music, and the rest of our culture? We do, all of us, though not all of us know it yet. Reality cannot be copyrighted.

So I think David, as you can judge from that, that passage, is going to be an interesting and, I think, challenging speaker.

KENNEALLY: What I like about that, though, is there's a sense of humor to go with it.

BURGER: Oh, absolutely.

KENNEALLY: So much of the debate about copyright can get very serious very quickly, and become a moral argument. It's not so much about business and different business models. There's a right and a wrong that often seems to be floating in the air, and that, to me, seems a bit off target.

BURGER: You're absolutely right, Chris. I have seen that in talking to a number of – people I'm talking to about speaking at the conference. There are many people who get very charged up about this, and I think that leads to kind of the stalemate that we've been witnessing. It's a little like what we see in Washington. People are unable to have a real conversation, because they're – they get their defenses up, and that really precludes an honest conversation, which is what we try to have at the conference.

KENNEALLY: Well, it's been a great conversation with you, Bill Burger. Bill is the producer for *OnCopyright2010* coming up in New York in March.



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Tell us, if somebody is listening and wants to join you, what they should know.

BURGER: Sure. Well, the conference will be held on March 10, 2010 at the Union League Club, which is a wonderful facility in midtown Manhattan. We have a website for the conference, which is, www.oncopyright2010.com. Anyone who is really interested in this can request an invitation there at the site. They can read more about the conference and about the speakers who will be there.

KENNEALLY: Well, again, thank you very much, Bill Burger, for coming into the office here and chatting with us about *OnCopyright2010*. It's been great chatting with you.

BURGER: It's a pleasure to be here. Thank you again, Chris.

KENNEALLY: Thank you, and for myself, Chris Kenneally, and everyone at Copyright Clearance Center, thank you for listening to *Beyond the Book*.

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