

**Copyright and Collaboration in the Theater**  
**Yale University**  
**March 9 and 10, 2018**

**Day 1: March 9, 2018**

**Session 1: 9:00 - 10:45**  
*Collaborative Communities*

Presenters: Bruce Lazarus, Phillip Howze, Carol Kaplan, Catherine Sheehy, Steven Wilf  
Who does copyright recognize and who does it ignore?

**Bruce Lazarus**

*Abstract:*

Playwrights, as well as their agents, attorneys and publishers, are concerned with protecting their intellectual property – as they should be. However, it is almost commonplace now for playwrights to use music or underlying material from third parties in their plays without first obtaining proper permission. How do we educate writers on their responsibilities when it comes to these third-party materials? What is “fair use” or should be licensed? What guidelines can be laid out to help playwrights navigate the process? How can we help other industries, such as music, books and film, create transparent processes to help playwrights obtain these permissions?

*Biography:*

Bruce Lazarus, as Executive Director of Samuel French, is committed to making the world safe and lucrative for playwrights, composers and lyricists. Bruce has practiced entertainment law, served as the Director of Business and Legal Affairs at Walt Disney Theatricals, and produced numerous Broadway and off-Broadway shows.

**Carol Kaplan**

*Abstract:*

Business and legal norms in live theatre evolved over many decades to preserve the rights of dramatists to own and control their work. However, as commercial theatre has expanded into a global industry, has drawn in corporate stakeholders and, in rare instances, might generate revenues in the billions, industry norms are coming under pressure. How are different stakeholders responding and addressing the concerns of collaborators? To what extent can dealmakers achieve outcomes that are fair and equitable, while also preserving legal norms that may be of vital importance to allow the theatre arts to thrive?

*Biography:*

Carol Kaplan is a practicing media and entertainment lawyer advising producers, investors, underlying rights owners, authors, directors, designers and performers in live stage deals. She has an MFA from Yale School of Drama and a JD from NYU School of Law where she was Editor-in-Chief of *Law Review*. She is published in *NYU Law Review*, *Seattle Journal for Social Justice*, and *Vanderbilt Journal of Entertainment and Technology Law*.

**Phillip Howze:**

*Abstract:*

Does the world author us? If we are authored by the world, must we offer something back to the world in return? What is owed and who is owed it? Is there a patent role for Art and the Artist in a politically fraught and increasingly consumer-driven culture? This talk examines intersecting lines of inquiry around collaboration, exchange, commodity and community.

*Biography:*

Phillip Howze is an early-career playwright. His work has been developed at Bay Area Playwrights Festival, Clubbed Thumb, Lincoln Center, Public Theater, San Francisco Playhouse, Sundance Institute and Yale Cabaret. His new play *Frontieres Sans Frontieres* premiered recently at The Bushwick Starr and will be published by Samuel French.

**Catherine Sheehy**

*Abstract:*

To be a successful dramaturg you need an open heart, a keen mind, a generous bent, and, as Ethel Barrymore said of being an actress, the hide of a rhinoceros. It is expected that you will put the best you have at the service of the production: research; insight; dispassionate observation; passionate belief in the work. And once you do, whether your input influences a single moment or the whole *mise-en-scène*, the shape of a monologue or major changes in the script, it often belongs to others. That may be the gig, but it's not always easy to accept.

*Biography:*

Catherine Sheehy, Resident Dramaturg (Yale Rep)/Chair, Dramaturgy and Dramatic Criticism (YSD). She has also worked at Theater for a New Audience, The Public, Signature Theater, the RSC, Center Stage, and Shakespeare Santa Cruz. Her adaptations have appeared at Yale Rep, Asolo, and Dallas Theatre Center. At YSD, she teaches seminars in comic theory and practica in dramaturgy.

## Steven Wilf

### *Abstract:*

What makes a dramatic character worthy of copyright protection? Fictional characters are not copyrightable *per se*. Rather, protection stems from the expression of those characters in copyrightable works. To determine whether fictional characters have reached the threshold of complexity worthy of copyright, courts often inquire how well a character has been delineated. This paper will interrogate the problem of the ways rounding out character varies across media—visual arts, literary works, and, most particularly, the dramatic arts. Oddly, copyright has often favored granting protection to visual depictions of character while being more reluctant to extend copyright to certain features of literary characters. But the psychological dimension of character—what the French call a person’s inner labyrinth, the interactions with other figures, and the Jack-in-the-Box aspect of response to unexpected dramatic developments indeed may be critical features for the construction of the sort of well-developed characters which should be favored by copyright. Characters inhabit storyworlds. This paper argues that the multiplicity of different stories experienced by a character—most particularly the back-story—might be the basis of a newly invigorated legal doctrine of character copyright protection. For nearly seventy-five years, the law of character copyright has been a muddle—often at odds with literary theory. The law’s denying protection to stock and one-dimensional characters is laudable. I argue moreover that racial and other artless stereotypes should be held to stricter scrutiny as insufficiently delineated characters. Nevertheless, by focusing on lists of visual and outwardly directed character traits copyright ironically has been as reductionist as those creating flat characters. Are not the best-rounded characters those with a past who evolve in the course of dramatic action?

### *Biography:*

Steven Wilf is Anthony J. Smits Professor of Global Commerce at the Law School of the University of Connecticut and currently Maurice R. Greenberg Visiting Professor at Yale Law School. Author of a number of books and numerous articles, his scholarship focuses on intellectual property law and legal history. He received both his Ph.D. in history and his law degree from Yale University. Prior to law teaching, he clerked for the U.S. Court of Appeals for the Second Circuit, and was a fellow at both the University of Chicago and New York University Law School. Professor Wilf has been a visiting professor at Hebrew University, Jerusalem and DAAD guest professor at the Freie Universität, Berlin. In 2010-2011, he was the Microsoft Fellow in Law, Property, and the Economic Organization of Society at Princeton University's Program in Law and Public Affairs (LAPA). During 2013-2014, he was appointed Elizabeth S. and Richard M. Cashin Fellow at Harvard University’s Radcliffe Institute for Advanced Studies. This past year, he was the Abraham L. Kaminstein Scholar in Residence at the United States Copyright Office. Wilf is currently completing a history of intellectual property law for Cambridge University Press.

**Session 2: 11:15 - 1:00**

***Show Business: Histories and Comparisons***

Presenters: Kathy Bowrey, Oren Bracha, Mark Rose, David Savran, Marlis Schweitzer  
How does copyright shape the relationship between art and business?

**Kathy Bowrey**

*Abstract:*

My research explores the play as an object of international trade in the early 20<sup>th</sup> century, based on the archives of "The Firm", J.C. Williamson Ltd. J.C. Williamson was an American born actor whose company became the dominant theatrical agency in Australia. His first major purchase of rights, negotiated whilst touring in the U.S., was Gilbert and Sullivan's H.M.S. Pinafore. Who initiated the movement of plays between Australia, Britain and the US? How were particular plays marked out as worth international touring? What terms were in the contracts? What was the extent of US theatrical influence in Australia before the arrival of film?

*Biography:*

Dr Kathy Bowrey is Professor in the Faculty of Law at the University of New South Wales, Sydney Australia. Her primary expertise relates to intellectual property, information technology, regulation, media practice, business history, feminist scholarship and Indigenous rights. Her body of publications trace the epistemological, organisational and regulatory frameworks that support technology and innovation, cultural production and arts advocacy.

**Oren Bracha**

*Abstract:*

The histories of copyright and theater performance practices are intertwined. My remarks will briefly explore the mutually constitutive relationship between the two with a focus on the formative era of the late nineteenth century. In this period the extension of copyright to encompass dramatic performances was part of a broader conceptual and ideological transformation of this field of law and the framework of owning cultural ideas embedded in it. At the same time the growth of dramatic copyright helped shaped theater practices in terms of both its economic model and underlying ideological construct.

*Biography:*

Oren Bracha is a legal historian and an intellectual property law scholar at the University of Texas School of Law. Bracha was a law clerk for the Chief Justice of the Supreme Court of Israel and worked on several teaching and research projects for the Berkman Center for Internet and Society at Harvard Law School. His fields of interest include intellectual property, cyberlaw, legal history and legal theory. His newest book is *Owning Ideas: The Intellectual Origins of American Intellectual Property, 1790-1909*.

## **Mark Rose**

### *Abstract:*

I propose to invoke the early 20th century “golden age” of theatrical plagiarism litigation and to give a brief introduction to one of the prominent attorneys of this period. Moses Malevinsky was Anne Nichols’ attorney in *Nichols v. Universal* (1930), a case that prompted one of Learned Hand’s most influential copyright decisions. Malevinsky was also the very quirky author of a book on play construction. In addition to serving as Nichols’ attorney, at trial Malevinsky cast himself as her expert witness, a fact that leads me to raises questions about the history of expert witnesses in infringement cases.

### *Biography:*

Mark Rose is Professor of English at the University of California, Santa Barbara. In addition to books on Shakespeare, Renaissance literature, and science fiction, he has published two books on copyright history: *Authors and Owners: The Invention of Copyright* (1993) and *Authors in Court: Scenes from the Theater of Copyright* (2016).

## **David Savran**

### *Abstract:*

Although it is often claimed that the distinction between highbrow and lowbrow has been definitively undermined, popular and academic discourse in Germany continues to tout the difference between “*U und E*” (entertainment music and serious music). But this difference is more than merely discursive, since it is written into the German Copyright Administration Act, which singles out “culturally significant works and achievements” for preferment by the distribution practices of copyright collectives such as GEMA, the German equivalent of ASCAP and BMI. Even though US practices are different, the strict cultural hierarchization in Germany, I argue, helps maintain the highbrow/lowbrow distinction worldwide.

### *Biography:*

David Savran is a specialist in twentieth and twenty-first century U.S. and German theatre, musical theatre, popular culture, and social theory. His most recent book is *Highbrow/Lowdown: Theater, Jazz, and the Making of the New Middle Class*, the winner of the Joe A. Callaway Prize. He is Distinguished Professor of Theatre at the CUNY Graduate Center.

## **Marlis Schweitzer**

### *Abstract:*

My presentation explores the backroom dealings, covert copyright submissions, and ruined hopes that contributed to one of the most bizarre events of Broadway’s 1908-9 season: the simultaneous opening of not one, but two, productions of Ferenc Molnár’s *The Devil*. The first, presented by Harrison Grey Fiske, was based on a direct translation from *Az Ördög*, the original Hungarian play. The second, presented by Henry W. Savage, was an English translation of *Der Teufel*, a German translation of the Hungarian play. Fiske and Savage each claimed that his production was the “authorized” version of the play and that he alone possessed the “moral right” to produce it. In many respects, both were right.

*Biography:*

Marlis Schweitzer is an Associate Professor in the Department of Theatre at York University. She is the author of *When Broadway Was the Runway: Theater, Fashion and Consumer Culture* and *Transatlantic Broadway: The Infrastructural Politics of Global Performance*, and co-editor (with Laura Levin) of *Performance Studies in Canada* and (with Joanne Zerdy) *Performing Objects and Theatrical Things*. She is currently the Associate Editor of *Theatre Survey*.

### Session 3: 2:00 - 3:45

#### *Laws and Norms*

Presenters: Catherine Fisk, Carl Mulert, Laura Penn, Ralph Sevush, Jane Wessel

How do industry norms and contracts shape ownership and collaboration in the theater?

#### **Catherine Fisk**

##### *Abstract:*

I will explore what film, radio, and TV writers have said and done from the 1930s to the present with respect to their legal status as employees and authors under both labor law and copyright law. The rights conferred by the collective agreement governing film and TV writing are given only to those who perform writing services for someone who has the power to demand revisions. So, too, under copyright law's work for hire doctrine. As Radio Writers Guild President Eric Barnouw wrote in 1962, "the right to demand revisions became by definition, and logically so, the essence of the employer-employee relationship." Finding artistic autonomy and control through collective action, while recognizing that authorship is necessarily collective and copyright ownership rests with corporate entities, has been a long-running struggle for writers of screen entertainment. I hope to have a dialogue over the similarities and differences between them and writers for the stage.

##### *Biography:*

Catherine Fisk is the Barbara Nachtrieb Armstrong Professor of Law at Berkeley Law. She teaches labor law and is the author of *Writing for Hire: Unions, Hollywood, and Madison Avenue* (Harvard University Press 2016) and *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800-1930* (UNC Press 2009).

#### **Carl Mulert**

##### *Abstract:*

Designers face unique challenges when protecting their Intellectual property. All designers share the following challenges:

- What is and isn't copyrightable in live performance in relation to the designer and their work;
- How do designers protect their work within the theatre, opera, dance world;
- The use of contractual language to protect a designers' rights in lieu of copyright law;
- Protection and/or copyright of design vs work product (sketches and drawings);
- When IP rights issues and/or copyright violation is a Union issue and when it is not.

There are also unique challenges that each discipline must contend with:

- Scenic Design – when a script calls for certain specifics and style, how do you protect your individual design – think *Other Desert Cities*;
- Costume Design – clothing is not copyrightable unless it is unique and exceptional, such as a cheerleading uniform or a human puppet in *The Lion King*. So how do you protect the modern dress play?

- Lighting Design – how do you distinguish one design from another and protect certain requirements called for in the script (a sunset, light streaming thru a window, etc).
- Sound and Projection Design borrow heavily on third party work in the creation of their designs so how do we protect the assemblage of work while respecting the rights of others within the design.

And what can we as a Union do to aid in this process?

- The easiest is to include clear language in all of our agreements protecting the designers rights. For example, from one such contract;

All rights in and to the design as conceived by the Designer in the course of the rendition of their services hereunder shall be, upon its creation, and will remain, the sole and exclusive property of the Designer; it being understood, however, that the Employer and its licensee shall have a perpetual and irrevocable license to use such design in any stage production or electronic reproduction of the play under the terms of this Agreement. Any additional use or license of the design by the Employer shall be subject to further agreement between the Employer and the Designer.

*Biography:*

Carl Mulert has worked in the entertainment business for 35 years in a career that has focused on the care and support of artists and how to provide better working conditions for those artists and their families. He has worked for non-profits as a theatre manager; as a literary and designer's agent; and currently he is the Business Rep for Live Performance at United Scenic Artists.

After earning his BFA from Boston University in Theatrical Production he worked at Arena Stage in Washington DC under the final years of Zelda Fichandler's tenure as founding artistic director. Zelda believed in creating a sustainable home for artists where we are free to explore our work in a safe and supportive environment. This mandate created the foundation for Carl's entire professional career.

Following Arena, Carl moved to New York to assume the role of Production Manager at Playwrights Horizons under the leadership of Andre Bishop. And after a brief stint as Managing Director of Virginia Stage Company, Carl was offered the chance to continue his work with Designers, Directors and Playwrights as an agent and partner at The Joyce Ketay Agency. His 15 year partnership with Joyce Ketay ended in 2006 when they sold the business and went to work at Gersh, where he stayed for four years.

In 2010, Carl joined United Scenic Artists, Local USA 829 IATSE, the Union representing Designers in Theatre, Opera and Dance across the country. In his role as Business Rep, he is now able to combine his negotiation skills with his intimate knowledge of not-for-profits and the design process. In his 8+ years at the Union, he has been involved in contract negotiations with The Broadway League, LORT, the Metropolitan Opera, New York City Ballet, Houston Grand Opera, San Francisco Opera and the Ahmanson Theatre among others and his department oversees and enforces over 20 individual Collective Bargaining Agreements. He has also negotiated first contracts with the Steppenwolf Theatre Company, Berkshire Theatre Group and is currently running an organizing campaign to negotiate a first contract for design work Off Broadway. In

2014 he managed a Designer Organizing campaign which brought in over 400 new members. He has studied Labor Law at the Cornell University Institute for Labor Relations, attended the IATSE Officer Institute and is a graduate of the New York State AFL-CIO/Cornell Union Leadership Institute.

## **Laura Penn**

### *Abstract:*

SDC has established a Property Task Force, whose goals are to improve SDC's capacity to protect the Intellectual Property of our Members, to educate our Membership and all directors and choreographers, professional and academic practitioner of their ethical responsibilities to create original work or seek permission to replicate the work of others, and to create strategic partnerships with collaborators to protect the creative and legal rights of all artists.

Policing and protecting the Intellectual Property of directors and choreographers has always been challenging. Now the digital age it has become more so. Authorized captures and mass distribution of live stage works on screens large and small, combined with bootleg videos on YouTube have created an environment where unlawful replication of full productions is commonplace, even expected. Expanded collaborations and growing interest in devised works, as well as non-traditional theatre making and the "sharing" economy, also contribute to the complexity of insuring that all theatre artists who are central to the creation of work are recognized for, and can protect and benefit from, their original creative work.

### *Biography:*

Laura Penn joined SDC as Executive Director in 2008 after a 25-year career in LORT management. While keeping a keen eye on the challenges currently facing directors and choreographers, Ms. Penn has begun forging partnerships with key industry constituents, focusing on improving the Union's communications capabilities and expanding its reach and scope within the industry. She is an active member of the Broadway Coalition of Unions and Guilds (COBUG), a member of the Tony Administration Committee and Freehold Studio/Theatre Lab, and a nominator for the Chita Rivera Awards. Ms. Penn continues to serve on the committee for Broadway Salutes and is a founder of this annual event celebrating Broadway artists. She has led negotiations for Broadway and LORT and continues to spearhead challenge-specific initiatives to educate and empower SDC Members and partners within the industry. Before joining SDC, Laura was the Managing Director of Seattle's Intiman Theatre for fourteen years. Under her leadership Intiman received the 2006 Regional Theatre Tony Award. She has served as an advocate and catalyst for civic dialogue and community building in the Puget Sound, and she received the "Seattle Distinguished Citizen" Medal from Mayor Paul Schell in 2001. Prior to Intiman, Laura worked at Seattle Rep and Arena Stage.

## **Ralph Sevush**

### *Abstract:*

I will discuss the legal basis and ethical justification for dramatists to own their copyrights and control their work. Topics to be included are the effects on dramatists of unauthorized uses and unapproved alterations of authors' works (including revisions to their text and stage directions), as well as disputes arising over casting requirements.

### *Biography:*

Ralph Sevush, Esq., with the Dramatists Guild since 1997, is currently its Co-Executive Director & General Counsel. Previously, he worked on numerous Broadway & off-Broadway productions as a director of business affairs, and in motion-picture marketing, distribution, and script development for New Line Cinema. He is a published writer, produced playwright, and former member of the BMI Librettists workshop.

## **Jane Wessel**

### *Abstract:*

This talk will highlight the preponderance of actor-playwrights on the late eighteenth-century British stage, arguing that dramatists used their physical presence and celebrity as actors to assert ownership over their dramatic parts and plays. Actor-playwrights "performed" the ownership rights that they legally lacked, using strategies like improvisation, bodily humor, and non-publication of play texts to tie their dramatic works to their physical bodies. Focusing on the actor-playwright Samuel Foote, this talk will argue that by making his physical presence integral to the performance of his work, Foote helped create a makeshift form of ownership and, at the same time, expanded ideas about what forms of artistic expression might be legally ownable.

### *Biography:*

Jane Wessel is Assistant Professor of English at Austin Peay State University, where she researches and teaches courses in eighteenth-century British literature and theatre history. Her work has appeared in *Theatre Survey* and *Restoration: Studies in English Literary Culture, 1660-1700*, and she is currently working on a book project on literary property and dramatic authorship in eighteenth-century England.

**Keynote: 4:30 - 5:30**

*Collaboration and the American Theater: Tony Kushner in conversation with Daphne Brooks*  
Yale Repertory Theater, 1120 Chapel Street, New Haven

**Tony Kushner**

*Biography:*

Born in New York City in 1956, and raised in Lake Charles, Louisiana, Kushner is best known for his two-part epic, *Angels In America: A Gay Fantasia on National Themes*. His other plays include *A Bright Room Called Day*; *Slavs!*; *Hydriotaphia*; *Homebody/Kabul*; and *Caroline, or Change*, the musical for which he wrote book and lyrics, with music by composer Jeanine Tesori. Kushner has translated and adapted Pierre Corneille's *The Illusion*, S.Y. Ansky's *The Dybbuk*, Bertolt Brecht's *The Good Person of Sezuan* and *Mother Courage and Her Children*, and the English-language libretto for the children's opera *Brundibár* by Hans Krasa. He wrote the screenplays for Mike Nichols' film of *Angels in America*, and Steven Spielberg's *Munich*. In 2012 he wrote the screenplay for Spielberg's movie *Lincoln*. His screenplay was nominated for an Academy Award, and won the New York Film Critics Circle Award, Boston Society of Film Critics Award, Chicago Film Critics Award, and several others. His books include *But the Giraffe*, *a Curtain Raising*, and *Brundibar: the Libretto*, with illustrations by Maurice Sendak; *The Art of Maurice Sendak, 1980 to the Present*; and *Wrestling With Zion: Progressive Jewish-American Responses to the Palestinian/Israeli Conflict*, co-edited with Alisa Solomon. His recent work includes a collection of one-act plays entitled *Tiny Kushner*, and *The Intelligent Homosexual's Guide to Capitalism and Socialism with a Key to the Scriptures*. In addition, a revival of *Angels in America* ran off-Broadway at the Signature Theater and won the Lucille Lortel Award in 2011 for Outstanding Revival.

Kushner is the recipient of a Pulitzer Prize for Drama, an Emmy Award, two Tony Awards, three Obie Awards, an Arts Award from the American Academy of Arts and Letters, a PEN/Laura Pels Award, a Spirit of Justice Award from the Gay and Lesbian Advocates and Defenders, a Cultural Achievement Award from The National Foundation for Jewish Culture, a Chicago Tribune Literary Prize for lifetime achievement, the 2012 National Medal of Arts, and the 2015 Lifetime Achievement in the American Theater Award, among many others. *Caroline, or Change*, produced at the National Theatre of Great Britain, received the Evening Standard Award, the London Drama Critics' Circle Award and the Olivier Award for Best Musical. In September 2008, Tony Kushner became the first recipient of the Steinberg Distinguished Playwright Award, the largest theater award in the US. He is the subject of a documentary film, *Wrestling with Angels: Playwright Tony Kushner*, made by the Oscar-winning filmmaker Freida Lee Mock. He lives in Manhattan with his husband, Mark Harris.

In "After Angels," a profile of Tony Kushner published in *The New Yorker*, John Lahr wrote: "[Kushner] is fond of quoting Melville's heroic prayer from *Mardi* and *Voyage Thither* ("Better to sink in boundless deeps than float on vulgar shoals"), and takes an almost carnal glee in tackling the most difficult subjects in contemporary history – among them, AIDS and the conservative counter-revolution (*Angels In America*), Afghanistan and the West (*Homebody/Kabul*), German Fascism and Reaganism (*A Bright Room Called Day*), the rise of capitalism (*Hydriotaphia*, or the *Death of Dr. Browne*), and racism and the civil rights movement in the South (*Caroline, or*

Change). But his plays, which are invariably political, are rarely polemical. Instead Kushner rejects ideology in favor of what he calls “a dialectically shaped truth,” which must be “outrageously funny” and “absolutely agonizing,” and must “move us forward.” He gives voice to characters who have been rendered powerless by the forces of circumstances – a drag queen dying of AIDS, an uneducated Southern maid, contemporary Afghans – and his attempt to see all sides of their predicament has a sly subversiveness. He forces the audience to identify with the marginalized – a humanizing act of the imagination.”

## **Daphne Brooks**

### *Biography:*

Daphne A. Brooks is the author of two books: *Bodies in Dissent: Spectacular Performances of Race and Freedom, 1850-1910* (Durham, NC: Duke UP), winner of The Errol Hill Award for Outstanding Scholarship on African American Performance from ASTR and *Jeff Buckley's Grace* (New York: Continuum, 2005). Brooks is currently working on a new book entitled *Subterranean Blues: Black Women Sound Modernity* (Harvard University Press, forthcoming). She has authored numerous articles on race, gender, performance and popular music culture such as “Sister, Can You Line It Out?: Zora Neale Hurston & the Sound of Angular Black Womanhood” in *Amerikastudien/American Studies*, “‘Puzzling the Intervals’: Blind Tom and the Poetics of the Sonic Slave Narrative” in *The Oxford Handbook of the African American Slave Narrative*, “Nina Simone’s Triple Play” in *Callaloo* and “‘All That You Can’t Leave Behind’: Surrogation & Black Female Soul Singing in the Age of Catastrophe” in *Meridians*. Brooks is also the author of the liner notes for *The Complete Tammi Terrell* (Universal A&R, 2010) and *Take a Look: Aretha Franklin Complete on Columbia* (Sony, 2011), each of which has won the ASCAP Deems Taylor Award for outstanding music writing. She is the editor of *The Great Escapes: The Narratives of William Wells Brown, Henry Box Brown, and William Craft* (New York: Barnes & Noble Classics, 2007) and *The Performing Arts* volume of *The Black Experience in the Western Hemisphere Series*, eds. Howard Dodson and Colin Palmer (New York: Pro-Quest Information & Learning, 2006).

## Day 2: March 10, 2018

### Session 4: 9:00 - 10:45

#### *Working Together*

Presenters: Jose Bellido, Maria Inês Evangelista de Oliveira Marques and Nahuel Telleria, Lynn Thomson, Anne Washburn

What kind of work in the theater does copyright value?

#### **Jose Bellido**

##### *Abstract:*

Bertolt Brecht's views on theatre, film and copyright are primarily found in *Der Dreigroschenprozeß* (1932). This is a lengthy essay concerning the litigation surrounding the film adaptation of his well-known *The Threepenny Opera* (1928). What Brecht had in mind here was a work of experimental observation rather than theoretical argumentation. Both the courtroom and public opinion constituted the stage for contradictions to arise. The specific (theatrical) nature of litigation enabled him to bring to light the contradictory ways in which the copyright system worked. My aim is to look at this essay since it allows us to understand copyright litigation in distinct and unexpected ways.

##### *Biography:*

Jose Bellido teaches law at the University of Kent (UK). He is particularly interested in the history of intellectual property law and has additional research interests in legal theory, evidence and legal history. His most recent book project as editor and contributor is *Landmark Cases in Intellectual Property Law* (Hart Publishing, 2017).

#### **Maria Inês Marques and Nahuel Telleria**

##### *Abstract:*

Whether participating in new play development, adaptation, translation, devising, education, audience engagement, literary management, or sundry other activities (most often simultaneously), dramaturgs require a nimble approach to navigate the liminality inherent to their field and are often put in positions of service to others. At the Yale School of Drama, student dramaturgs train alongside their colleagues from eight different departments, achieving a model of collaboration that most fully represents models typical of regional theaters across America. Yet this model places the playwright or the director at the top of the pyramid, consequently shaping the nature of collaboration at the drama school in which students experience and replicate status quo power inequities. If a conservatory program trains its students for artistic collaboration in practice, why are the unwritten rules that undergird this process rendered invisible? Can we envision another collaborative model that avoids hierarchy, assembly-line mentality, and structured delegation? How does the school, as a locus of critical thinking, deal with situations in which students engage in work that requires horizontal and collective collaboration, therefore challenging the "standard" top-down form? What practical advice can it dispense in these occasions? And how can training programs reform their bureaucratic structures to keep up with and define new collaborative models in the theater?

*Biographies:*

Maria Inês Marques is a DFA candidate in Dramaturgy at Yale School of Drama, researching early modern evangelizing theater in Latin America. She holds a BA degree in Languages, Literature and Culture (Portuguese/English), and an MA in English and American Studies from the Faculty of Arts, University of Porto. Her dramaturgy credits include *La Scène*, by Valère Novarina (TeCA, Portugal); *The Moors*, by Jen Silverman (Yale Repertory Theatre); *Bulgaria! Revolt!*, by Miranda Rose Hall and Elizabeth Dinkova and *Neva*, by Guillermo Calderón (Brown University/Trinity Rep). She has worked as managing editor for *Theater* (Yale University and Duke University Press) and as script reader for the Yale Repertory Theatre and Theatre for a New Audience. Maria was the translator and dramaturg of the English language world premiere of *Boris Yeltsin*, by Mickaël de Oliveira (Yale Cabaret; 2018 remount in NYC). She collaborates, as visiting dramaturg and translator, with the Portuguese theater company *Saudade* (NYC), for which she translated *The Constitution*, also by Mickaël de Oliveira (2017, Theater Under St. Marks, NYC).

Nahuel Telleria is a doctoral candidate in Dramaturgy and Dramatic Criticism at Yale School of Drama researching the confessional mode in Argentine theater postdictatorship. He co-dramaturged Yale Repertory Theatre's production of *Happy Days* in 2016 and its 2017 remount at Theatre for a New Audience; last fall, the Wilma Theater staged his translation of Lorca's *Blood Wedding*. Nahuel has a BA in English and Theater from Columbia University and an MA in Humanities from the University of Chicago.

**Lynn Thomson**

*Abstract:*

Twenty years ago, I participated in the making of the musical *Rent*. And that's both the start and middle of a story. My subject is personal, a patchwork of memory and reflection, about the nature of collaboration as I practiced, and learned, from it. I will touch on my idiosyncratic path through the legal system and the law, not to mention not for profit theatre, as I naively experienced it all, as well as the aftermath of my lawsuit. What, now, do I continue to question about copyright? How do I practice collaboration now? Why, in the present cultural climate, I wonder, does copyright matter?

*Biography:*

Lynn M. Thomson is a stage director, dramaturg, teacher, and scholar. Most of her career has focused on the development and production of new American plays and joyful work with playwrights. In 2004, she founded AMERICA-IN-PLAY, devoted to teams of collaborators devising new theatre inspired by investigations into a neglected legacy of early American plays. She is Professor of Theatre at Brooklyn College.

## **Anne Washburn**

### *Abstract:*

A discussion of the current tension between playwrights and directors over a non-standard contractual stipulation, attached to a premiere production, which gives the director a percentage of a playwright's royalties going forward. This deeply partisan look at the topic will examine issues of creative ownership and collaboration, and the emotional and practical role remuneration plays in each, as well as the particularly volatile nature of playtext, which generally hovers in an uneasy middle ground between blueprint and scripture.

### *Biography:*

Anne Washburn's plays include *Mr. Burns*, *The Internationalist*, *A Devil At Noon*, *Apparition*, *The Communist Dracula Pageant*, *I Have Loved Strangers*, *The Ladies*, *The Small* and a transadaptation of Euripides' *Orestes*. Her work has been produced by 13P, Actors Theater of Louisville, American Repertory Theatre, Cherry Lane Theatre, Clubbed Thumb, The Civilians, Dixon Place, Ensemble Studio Theater, The Folger, London's Gate Theatre, Playwrights Horizons, NYC's Soho Rep, DC's Studio Theater, Two River Theater Company, NYC's Vineyard and Woolly Mammoth. Awards include a Guggenheim, a NYFA Fellowship, a Time Warner Fellowship, Susan Smith Blackburn finalist, and residencies at MacDowell and Yaddo. She is an associated artist with The Civilians, Clubbed Thumb, New Georges, and is an alumna of New Dramatists and 13P. Currently commissioned by MTC, Playwrights Horizons, Soho Rep, and Yale Rep.

**Session 5: 11:15 - 1:00**

*Copyright and Its Discontents*

Presenters: Oliver Gerland, Mary LaFrance, George Pate

What should (or might) the future of copyright in the theater be?

**Oliver Gerland:**

*Abstract:*

Given the rise of digital technologies, there is call to overhaul the 1976 Copyright Act. Some argue that the next copyright regime should center on an exclusive right of "access." Copyright holders then can charge a fee for permission (license) to access a copyrighted work regardless of its form, e.g., as copy or performance.

If access is the copyright future, it lies in theatre history. Who was first to enclose a site of performance and charge a fee for license to enter it? Where and when did the system of licensed access originate? Before or after Shakespeare, do you think?

*Biography:*

Oliver Gerland is Associate Professor of Theatre at the University of Colorado Boulder, with published essays on the performance theory of U.S. copyright law (*Theatre Journal* 2007) and the origins of common law playwright (*Theatre Notebook* 2015). He loves to tell stories about people getting kicked out of a theatre.

**Mary LaFrance**

*Abstract:*

In American courts, joint authors of creative works are routinely denied their share of copyright ownership. With no support from the copyright statutes, federal courts have developed an unnecessary and completely unsound "test" of joint authorship which they concede is designed to defeat most joint authorship claims. Many of the seminal cases have arisen from theatrical collaborations. Due to the nature of the creative process, actors, directors, or dramaturgs can make significant creative contributions to a new work. Yet even in the rare case where they can fully document their contributions, they are unlikely to be recognized as joint authors.

*Biography:*

Mary LaFrance (A.B., Bryn Mawr; M.A./J.D., Duke) is the IGT Professor of Intellectual Property Law at the William S. Boyd School of Law, UNLV. She has authored six books as well as numerous law review articles and book chapters, and serves as the Las Vegas regional theatre critic for [TalkinBroadway.com](http://TalkinBroadway.com).

## **George Pate**

### *Abstract:*

David Mamet issued a cease and desist to Alchemist Theater in Milwaukee in 2014 to halt their production of his play *Oleanna*. Mamet said the theater violated their contract by casting a young man to play the part of Carol. But did they? I imagine an argument a theater company might make to dispute the alleged breach of contract, an argument claiming that although the actor was male, the gender of the character remained unchanged. I use this case as a jumping off point to ask questions about the real versus the perceived limits of directorial freedom and playwrights' use of legal structures to attempt to control not only uses but also interpretations of their work.

### *Biography:*

George Pate serves as Assistant Professor of Drama and Theater at the University of South Carolina at Beaufort. His scholarship has appeared in *Theater Journal*, *Theater Symposium*, *The Journal of Dramatic Theory and Criticism*, and *The Journal of American Drama and Theater*. In addition to his academic pursuits, he is a playwright, actor, and director.