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Welcoming Remarks: “Intellectual Property and Social Justice”

*Dean Rex R. Perschbacher**

Good morning. On behalf of Chancellor Vanderhoef, the UC Davis School of Law, and the UC Davis Law Review, welcome to the 2006 Law Review Symposium. This is an immensely talented group, and I am honored to mark a formal start to the Symposium.

First, let me thank those who took the lead in putting this Symposium together. This list includes members of the UC Davis Law Review, namely, Editor in Chief Jonathan Kaplan, and Senior Symposium Editors Irene Yang, Jocelyn Blumenthal, Brandy Christensen, Amy Daniel, and Fermin Villegas. This is an *intellectual property* symposium, and much of the creative and inspirational credit for bringing this group together today — not to mention what used to be called “legwork” (it seems somehow inadequate to call it “fingerwork” or “mouse-work,” but they probably have a better term) — goes to our talented intellects here on the excellent UC Davis School of Law faculty. I particularly want to recognize the faculty sponsors and moderators, Professors Anupam Chander and Madhavi

* Dean and Professor of Law, UC Davis School of Law. Remarks delivered at the UC Davis Law Review Symposium: Intellectual Property and Social Justice (March 10, 2006).

Sunder, and the founding mother of King Hall's intellectual property faculty, Professor Leslie Kurtz. I want to welcome back, in ways I cannot put into simple categories, friends of King Hall. This list includes Professor Keith Aoki, the Philip H. Knight Professor at the University of Oregon School of Law; Professor Margaret Chon, Professor and Dean's Distinguished Scholar, Seattle University School of Law; Professor William Fisher III, the Hale and Dorr Professor, Harvard Law School; Professor Robert Merges, Wilson Sonsini Goodrich & Rosati Professor, Boalt Hall School of Law; Professor Pamela Samuelson, the Richard M. Sherman '74 Distinguished Professor, Boalt Hall School of Law; and Professor Molly Shaffer Van Houweling, Boalt Hall School of Law. Each of you has been a guest and more here at UC Davis. Finally, I want to recognize our very distinguished guests, and mostly first-time visitors to Davis. This list includes Professor Julie Cohen, Georgetown University Law Center; Professor Rosemary Coombe, York University; Professor Rochelle Cooper Dreyfuss, Pauline Newman Professor, New York University School of Law; Professor Shubha Ghosh, SMU Dedman School of Law; Professor Laurence R. Helfer, Vanderbilt University Law School; James Love, Director of the Consumer Project on Technology; Professor Kal Raustiala, UCLA School of Law; Mr. Talha Syed, Doctoral Candidate, Harvard Law School; Professor Siva Vaidhyanathan, New York University; and Professor Peter Yu, Michigan State University College of Law. Welcome and thank you all for traveling from all parts of the country to be here with us today.

I also need to recognize and thank the cosponsors of today's Symposium along with the UC Davis Law Review and the School of Law: Cooley Godward LLP; the UC Davis Law Students Association and Recruitment, Retention, and Outreach; UC Davis Offices of the Chancellor and Provost; Campus Community Relations; Howrey LLP; Latham & Watkins LLP; Shartsis Friese LLP; UC Davis Office of Research; Arnold & Porter LLP; and Westlaw. Thank you!

I really cannot even begin to do justice to the breadth and sophistication of the papers the participants have prepared for this Symposium in these few words, but even the casual reader (and this certainly includes me) has to be impressed by the focus of your efforts. For a symposium on intellectual property, usually heavy on the property end and sometimes as little connected to the lives of most persons on this planet as cyberspace is to the air we breathe, you have produced a refreshingly human and humane perspective that must make our organizers proud. Your papers are amazing.

Terry Fisher and Talha Syed's paper begins by graphically describing the effects of a maldistribution of drug therapies between the

developing and developed worlds as “an annual global holocaust.” James Love’s paper is critical of the failure of the United States, Japan, and Europe to attend to global public goods, the public domain, open research projects, and public sector financing of research, and describes the need for a new “Global Framework on Essential Health Research and Development.” Keith Aoki wants to know, “Who owns the blues?” and explores race and intellectual property law, suggesting there is no “one-size-fits-all” intellectual property framework, drawing upon the work of Margaret Chon, Madhavi Sunder, Anupam Chander, and others.

Margaret Chon critiques the liberal legal paradigm underlying U.S. intellectual property law and suggests an alternative social justice approach “from below.” Shubha Ghosh updates Hardin’s “tragedy of the commons” with his own “fable of the commons,” looking outward rather than inward and incorporating distributive justice issues into our understanding of intellectual property. Laurence Helfer ranges impressively through the world of public international law and its alphabet soup of acronyms for resolutions, declarations, treaties, covenants, agreements, and organizations, in calling for and sketching out a comprehensive and coherent “human rights framework” for intellectual property law and policy. Julie Cohen detects three methodological anxieties experienced by intellectual property scholars resulting from an overly defined and narrow universe of rights-based theories and economic analysis. She suggests a way out of this claustrophobic dilemma by opening up the methodological boundaries to a broader array of normative visions in understanding creative processes. Finally, bringing neophytes like myself back to a universe we visit every day, Siva Vaidhyanathan presents a bleak picture of Google’s flawed digitization project, which, he argues, would destabilize the already stressed copyright system, except that it is doomed to succumb to legal challenges.

As always, the work of construction is preceded by demolition, or in the recent past of legal theorizing, deconstruction. I want to congratulate all of you participating in this Symposium and project for undertaking both acts of creative destruction and reconstruction. This promises to be a wonderful discussion. Thank you for coming to UC Davis, and on with “Intellectual Property and Social Justice.”