

Stanford Scholar Wins Right to Publish Joyce Material in Copyright Suit Led by Stanford Law School's Fair Use Project

James Joyce Estate Agrees to Settle

STANFORD, Calif., March 22, 2007—Stanford Law School's Fair Use Project announced today that Stanford University Acting Professor of English Carol Shloss won the right to publish her scholarship on the literary work of James Joyce online and in print based on a settlement agreement with the Joyce Estate. The landmark case *Shloss v. Estate of James Joyce* was filed last year on the eve of Bloomsday—the annual Joyce celebration that takes place on June 16 to memorialize the day that Leopold Bloom, the main character in Joyce's *Ulysses*, made his walk through Dublin. The case sought to establish Shloss's right to use copyrighted materials in her writing under the "fair use" doctrine.

Relying on many primary sources, Shloss's work focuses on the life of Lucia Joyce: her unacknowledged artistic talent, her tragic life spent mostly in mental institutions, and the unrecognized influence she exerted over her father's work. Upon learning of Shloss's scholarship, the Joyce Estate—controlled by Joyce's grandson Stephen James Joyce—denied her permission to quote from any of the materials the Joyce Estate controlled and repeatedly threatened Shloss with a copyright infringement suit.

The Fair Use Project and Cyberlaw Clinic filed a lawsuit on behalf of Shloss in June 2006, asking a federal court to find that she has the right to use quotations from published and unpublished material relating to James and Lucia Joyce on a scholarly website.

This week, Stephen James Joyce and the Joyce Estate entered into a settlement agreement enforceable by the court that lets Shloss publish this material electronically and also publish a printed supplement to her book *"Lucia Joyce: To Dance in the Wake."*

"The Joyce Estate has been extremely aggressive in enforcing copyrights and has threatened scholars with lawsuits even though their work qualifies under the 'fair use' doctrine of copyright law," explained Anthony Falzone, who is the executive director of the Fair Use Project and who led the litigation team that included lawyers from Stanford Law School's Center for Internet and Society and Cyberlaw Clinic, as well as the law firms of Howard Rice Nemerovski Canady Falk & Rabkin, and Kecker & Van Nest. "Our client got exactly what she asked for in her complaint, and more."

"I am extraordinarily happy that Stanford's Fair Use Project has enabled an academic to do her work," said Lawrence Lessig, Stanford Law professor and director of the Stanford Center for Information and Society (CIS). "But this is just the first of a series of cases that will be necessary to establish the reality of creative freedom that the 'fair use' doctrine is intended to protect in theory. We will continue to defend academics threatened by overly aggressive copyright holders, as well as other creators for whom the intended protections of 'fair use' do not work in practice. I am hopeful that this is the last time this defendant will be involved in an action like this. But it is only the first time that we will be defending academics in these contexts."

In 2003, prior to publishing *Lucia Joyce: To Dance in the Wake* about Lucia's influence on *Finnegans Wake*, Shloss was forced to delete substantial evidentiary portions of the manuscript to avoid the threat of copyright litigation from the Estate. In 2005, Shloss created a supplemental website containing the supporting material that was cut from her book, but had not made the website publicly available. In a series of letters to Shloss, the Joyce Estate threatened legal action if the website were to be made available to the public. In 2006, Shloss decided to sue to help clarify the ability of scholars to explore the personal histories of their subjects using their

biographical material without threat of suit. Shloss's claim asserted that the website uses the work in a scholarly transformative manner—a manner allowed under U.S. copyright law.

"The work of literary scholars is inherently transformative," said Carol Shloss, acting professor of English at Stanford. "We take the writing of someone whose work we love and share it with others. We keep our human inheritance alive by making it part of a dialog with our peers, our friends, our students and the generations that follow us. When that dialog is interrupted, when we are squeezed between the aggression of literary estates and the apprehensions of publishers, something very important is lost. I fought not just for Lucia and Joyce, whose words had to be taken out of my book, but for the freedom to consider what happened to them and for the freedom of others to respond to my ideas. 'Fair use' exists to foster this liveliness of mind; its measure is in transformation not in a restrictive counting of words. Everyone who worked on this case understood that something far more important than my particular book was at stake in the fight. It was an honor to work with them."

"I think we succeeded in showing the Joyce community and other scholars that they have rights and the opportunity to push back against overly aggressive copyright enforcement," explained David Olson, a resident fellow at the Center for Internet and Society who worked on the case.

Along with Lessig, Falzone, and Olson, several lawyers played a key role in the case and provided pro bono services: Mark Lemley, Stanford Law professor and of counsel at Keker & Van Nest; Robert Spoo and Bernie Burk and their colleagues at Rice Nemerovski Canady Falk & Rabkin, P.C.

Carol Shloss is expected to make her website live in the coming days at <http://www.lucia-the-authors-cut.info>

About the Fair Use Project

The Stanford Center for Internet and Society's "Fair Use Project" ("the FUP") was founded in 2006. Its purpose is to provide legal support to a range of projects designed to clarify, and extend, the boundaries of "fair use" in order to enhance creative freedom. The FUP represents filmmakers, musicians, artists, writers, scholars, and other content creators in a range of disputes that raise important questions concerning fair use and the limits of intellectual property rights. In doing so, it relies on a network of talented lawyers within the Center for Internet and Society, as well as attorneys in law firms and public interest organizations that are dedicated to advancing the mission of the FUP.

About the Center for Internet and Society

The Center for Internet and Society is a public interest technology law and policy program at Stanford Law School and a part of the Law, Science and Technology Program at the law school.

About the Cyberlaw Clinic

The Cyberlaw Clinic provides legal representation to private litigants and other clients in matters involving the public interest and technological development. The Cyberlaw Clinic is one of Stanford Law School's nine educational law clinics, which function in a manner akin to law firms and provide diverse educational opportunities for law students. The position taken in the litigation represents the views of the litigant, and does not necessarily reflect the position of Stanford Law School or Stanford University. The Center's home page is located at <http://cyberlaw.stanford.edu/>.

About Lawrence Lessig

Lawrence Lessig is the founder and director of the Center for Internet and Society and the C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School. Professor Lessig represented website operator Eric Eldred in the U.S. Supreme Court case *Eldred v. Ashcroft*, a challenge to the 1998 Sonny Bono Copyright Term Extension Act. He was named one of Scientific American's Top 50 Visionaries for arguing "against interpretations of copyright that could stifle innovation and discourse online."

About Anthony Falzone

Anthony Falzone is the executive director of Stanford Law School's Fair Use Project. He is an intellectual property litigator with more than eight years of experience and has represented technology and media clients in a wide array of intellectual property disputes including copyright, trademark, rights of publicity, and patent matters. Prior to joining Stanford Law School, he was a partner in the San Francisco office of Bingham McCutchen LLP.

Additional Participating Attorneys

Mark Lemley is the William H. Neukom Professor of Law at Stanford Law School, and the director of the Stanford Program in Law, Science and Technology. He teaches intellectual property, computer and Internet law, patent law, and antitrust. He is of counsel to the law firm of Kecker & Van Nest, where he litigates and counsels clients in the areas of antitrust, intellectual property, and computer law. He is the author of six books and 65 articles on these and related subjects, including the two-volume treatise *IP and Antitrust*.

David Olson acted as a supervising attorney while he was a resident fellow with the Center for Internet and Society. Olson has litigated numerous high-profile intellectual property cases in federal courts across the country.

Certified law students John Polito and William Ridgway worked extensively on this case as part of the Cyberlaw Clinic.

Robert Spoo, a Joyce scholar and copyright lawyer, is co-counsel for Shloss on this case. Formerly a Professor of English and the Editor of the *James Joyce Quarterly*, he now practices law full time and has written extensively on Joyce and copyright law. Spoo is an attorney with the law firm of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation

Bernard A. Burk, a director of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, acted as co-counsel for Shloss. Burk engages in litigation and counseling in the media, technology, publishing, and entertainment industries and has represented a wide range of clients including PC World Communications, CMP Media, various academic journals, Lee Mendelson Film Productions, Major League Baseball Properties, Clint Eastwood, and Green Day.

About Stanford Law School

Stanford Law School is one of the nation's leading institutions for legal scholarship and education. Its alumni are among the most influential decision makers in law, politics, business, and high technology. Faculty members argue before the Supreme Court, testify before Congress, and write books and articles for academic audiences, as well as the popular press. Along with offering

traditional law school classes, the school has embraced new subjects and new ways of teaching. The school's home page is located at www.law.stanford.edu.

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COMMENT

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