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October 16, 2019

The American Law Institute
4025 Chestnut Street
Philadelphia, PA 19104

Submitted via online portal

Re: ALI Copyright Restatement Council Draft No. 3

Dear ALI Council Members:

We write regarding the American Law Institute (“ALI”) Restatement of the Law, Copyright (“Copyright Restatement”) project’s Council Draft No. 3.

Intellectual Property Owners Association (IPO) is an international trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO’s membership includes about 200 companies and close to 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members. IPO membership spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of IP rights.

We thank ALI for allowing IPO to participate in the project. During the past several months, IPO has learned more about the project and reviewed past preliminary drafts, council drafts, and comments related to the project, as well as attended the Advisor meeting on Preliminary Draft No. 4. Based upon our participation in the project and our review of the documents, we are concerned about the project in general, and specifically, about Council Draft No. 3.

It does not appear to IPO that the Copyright Restatement is ready to be approved by ALI’s Council or voted on by ALI’s members. In many places, the drafts have adopted a minority interpretation of copyright law without making clear what the majority rule is. Even in instances where cases on point exist to interpret a statute, the drafts sometimes put forth their own, novel interpretations instead. In places, they cite foreign law that is contrary to the majority interpretation in the United States.

Because the draft, in many places, is inconsistent with existing copyright law, the Copyright Restatement is at risk of being unhelpful to courts and litigants. When it is cited, parties may point out that the Copyright Restatement does not, in fact,

restate the law. In addition, should the unfortunate circumstance occur where these flaws go unnoticed by a court or litigants, courts may issue decisions based on an erroneous view of the law.

IPO understands that many others that have raised concerns about the Copyright Restatement project, including the U.S. government, professors and practitioners with extensive copyright credentials, and a number of other stakeholders. Comments made have included that there is no need for a restatement of statutory law, and that there are concerns about process, format, and inconsistencies with existing case law.

The ALI Council may wish to reconsider whether this project should continue to go forward. If the project does go forward, IPO suggests that, at a minimum, the ALI Council should send Council Draft No. 3 back to the project's Reporters, with the instruction that the issues raised by Advisors and Liaisons should be directly addressed, and that the draft should adopt, or clearly explain where it departs from, the Copyright Act's statutory text and the majority interpretation of the Act used by the courts.

We thank ALI for considering IPO's comments and would welcome any further dialogue or opportunity to provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Hadad". The signature is fluid and cursive, with the first name "Henry" and the last name "Hadad" clearly distinguishable.

Henry Hadad
President