Topic: Novels for Hire: Branded Entertainment, Copyright and the Law

Abstract: Literature and advertising have been interdependent since the history of print, but changes in both the political economy of publishing and the market landscape of advertising have produced new concerns for intellectual property law. E-books are on the rise and an increasing number of books are released online or with substantial online marketing platforms. Publishers are averse to the risks of publishing in print form, and authors are reportedly turning to vanity presses in unusual number. Advertisers are facing mounting pressures and decreasing revenues. With the fragmentation of their consumer base and a proliferation of content channels and media, disseminating brand messages that will be remembered is a constant challenge.

Perhaps in response, advertisers and content producers are converging in cautious but growing number. Given the prominence and success of authors who have agreed to participate in branded literature ventures in the past decade—among them Fay Weldon, Stephen King, James Patterson and Jane Smiley—we can infer the growing acceptance of the sponsorship of literature.

What happens to the traditional balance of authors' rights, benefits, and incentives under copyright, as branded literature grows? Should we be concerned about First Amendment issues if novels threaten to start crossing the contested boundaries of commercial speech, that is, if they aspire to little more than colonizing our cognitive shelf space with their sponsored brands? Should we be concerned for trademark owners, if, due to the growth of branded literature, references to brands in unbranded literature confuse consumers as to sponsorship or affiliation? I am interested in exploring the ramifications for IP law of the potential increase in works-made-for-hire intended as branded entertainment.