



Diane P. Wood
Director

VIA ELECTRONIC TRANSMISSION

March 19, 2026

The Honorable Thom Tillis, United States Senator
The Honorable Adam Schiff, United States Senator
United States Senate
Washington, DC 20510

Dear Senator Tillis and Senator Schiff:

Thank you for your February 19, 2026 letter regarding The American Law Institute's Restatement of the Law, Copyright. We appreciate your interest in our work and the opportunity to address your concerns.

By way of introduction and background, the Copyright Restatement was developed over a decade through the ALI's standard, transparent process, involving a broad and diverse group of subject-matter experts, interest-group representatives, practicing lawyers, judges, and academics. The Restatement was produced through multiple rounds of drafting, feedback, and approval by the ALI's Council and membership before its adoption in May 2025.

Like other Restatements that address areas governed by federal statutes—such as foreign relations, unfair competition, and American Indian Law—the Copyright Restatement does not replace or reinterpret the Copyright Act. Instead, it serves as a secondary source for courts on topics where the statutory language leaves room for judicial interpretation and particularly when a substantial body of judicial interpretation has developed. It quotes and cites the relevant sections of the Copyright Act, cites relevant case law and the views of the U.S. Copyright Office, and acknowledges competing interpretations where reasonable disagreement exists.

Throughout the drafting process, the Reporters made numerous significant, substantive changes to the Restatement in response to extensive and sometimes conflicting feedback from a dedicated group of Advisers, Liaisons, and ALI members. Although 23 of the project's more than 180 Advisers, Liaisons, and consultative group members resigned near the project's conclusion, the project had the benefit of their participation for many years. The reasons for the resignations were well known to the ALI Council and membership body before the final project drafts were overwhelmingly approved. The resulting Copyright Restatement meets the ALI's definition of a Restatement by aiming to clearly articulate existing law and provide guidance to courts, and it reflects the best judgment of the ALI as a whole.

Below is a more detailed explanation that responds to your specific questions and addresses these points.

Some background about the ALI and the Restatement process may provide helpful context and address some of your broader questions. The American Law Institute is the leading independent organization in the United States producing scholarly work to clarify, modernize, and improve the law. The ALI's operating revenue comes primarily from publishing, educational programs, membership dues, income from investments, and contributions from our members. We do not accept money from interest groups, corporations, or the government. With the exception of the Director and Deputy Director, members of the ALI are volunteers who receive no compensation for the considerable time and effort they dedicate to the work of the ALI.

The ALI drafts, discusses, revises, and publishes Restatements of the Law, along with other scholarly works like the Uniform Commercial Code, the Model Penal Code, and Principles of the Law projects. Although the ALI invites the participation of a broad spectrum of groups who have an interest in our work, an ALI Restatement is not a legislative endeavor. For more than a century, our organization has prided itself on producing work that is impartial, nonpartisan, and independent. Its nature is legal and scholarly, not political or legislative.

Restatements survey a legal field and render it more intelligible by synthesizing legal doctrines into a series of rules (known as “black-letter” provisions), accompanied by Comments that analyze and explain the black letter.¹ Restatements assume the perspective of a common-law court, articulating rules and formulations that are grounded in, and supported by, extensive citations to case law and other sources of legal authority. When a Restatement takes a position on a topic that is susceptible to multiple interpretations, ALI policy dictates that the Comments describe opposing views, acknowledge contrary authority, and explain the reasoning that supports the Restatement's approach. In the words of the ALI *Style Manual*, “if a Restatement declines to follow the majority rule, it should say so explicitly and explain why.”

Importantly, Restatements are not—and do not present themselves as—independent sources of law. They are secondary sources that help judges and practitioners interpret and understand the law. Their authority derives from the Institute's careful process and the stature of its members. The ALI produces high-quality products through thousands of hours of collective work, but ultimately, they are secondary sources. Judges and practitioners understand that Restatements do not displace controlling statutes and precedents any more than other secondary works, such as treatises or law review articles.

¹ Restatements also include “Reporters' Notes,” which are the work of the Reporters, not the Institute. Reporters' Notes set forth and discuss the sources relied upon in formulating the black letter and Comments. They also provide an avenue for additional research and serve as a place where Reporters can convey their own views, apart from those of the Institute, about material discussed in the black letter and Comments.

The process of producing a Restatement is rigorous and multi-phased. Subject-matter experts known as Reporters submit draft text to a group of fellow subject-matter experts called Advisers, to Liaisons from relevant organizations, and to the Members Consultative Group (MCG), a group of ALI members who volunteer to participate in the project.

Reporters are selected by the Director of the ALI, in consultation with the ALI's Projects Committee and leading figures in the field. Their selection is then approved by the Institute's Council or Executive Committee. ALI Reporters are scholars at the top of their field who are known for their ability to listen, collaborate, and work toward consensus. Most projects have 2-5 Reporters depending on the breadth of the undertaking; the Copyright Reporter team consisted of one lead Reporter and four Associate Reporters.

Each draft of an ALI project is made available to ALI members and project participants through a dedicated project page on the ALI website. The Advisers, Liaisons, and MCG members offer detailed written comments and discuss and debate project drafts with the Reporters at project meetings. The Reporters then revise the draft text based on that feedback. All project participants are invited to comment on every draft, and written comments are also published on the project page, where project participants and all of the ALI's 4,768 members can access them.

Project meetings are open to all project participants and ALI members. Project participants who are not ALI members can attend the ALI's Annual Meeting as guests and may request permission to address the ALI membership from the Annual Meeting floor.

The official text of a Restatement is published only after each of its provisions has been separately approved by both the Institute's Council—the organization's volunteer board of directors, consisting of a group of 65 leading lawyers, judges, and scholars—and the Institute's members, each of whom was selected on the basis of outstanding achievement in the legal profession. Council and ALI members span a wide range of ideological perspectives, subject-matter expertise, and professional backgrounds; their feedback on Restatement drafts covering specialized fields ensures that the final product is intelligible to its intended audience of generalist judges and lawyers. Critically, the ALI's bicameral approval process also guards against manipulation and inaccurate or biased accounts of the law.

To further safeguard the Institute's independence, ALI Council Rule 4.03 provides that Reporters, Advisers, and ALI members who participate in an ALI drafting process are expected to "leave their clients at the door," offering advice and guidance based on their objective understanding of the law. For certain subjects with clearly identifiable stakeholders, ALI invites "Liaisons" to participate on behalf of the particular stakeholder groups. While Liaisons provide valuable input from interested parties, votes on the Restatement are reserved for Council and ALI members.

The ALI's deliberative process involves the dedicated work of many minds and perspectives over many years. Typically, the Reporters are required to make many changes to the text as a result of this process and the decisions of the Council or membership body. The ultimate work

product represents the position of the ALI as a whole, not necessarily that of the Reporters or any member as to every provision.² We encourage informed, respectful debate in written comments and at our meetings as a robust quality-control mechanism. Our process ensures that every issue receives a full airing of viewpoints and that the final product represents the considered scholarship, judgment, and experience of the ALI as a whole.

Regarding the Copyright Restatement specifically:

- **The Copyright Restatement Solicited Input from Participants with a Wide Range of Views.** The Adviser group for the Copyright Restatement was characteristically broad and diverse. It included private-practice lawyers and in-house attorneys for a range of corporations and industry groups; academics from top law schools across the country; judges; and members of the U.S. Copyright Office. In addition, the ALI invited representatives from a spectrum of groups who have an interest in the scope and nature of intellectual property to participate as Liaisons: the American Bar Association Section of Intellectual Property Law, the Association of the Bar of the City of New York, the Copyright Alliance, the Intellectual Property Owners Association, McGraw-Hill Education, and the Recording Industry Association of America. More than 120 ALI members joined the project’s Members Consultative Group; like the Advisers, the MCG included private lawyers, academics, and judges. A current list of project participants can be found [here](#).³
- **The Copyright Restatement Followed the ALI’s Standard Process.** The Copyright Restatement’s drafting process took place over the course of a decade, from the issuance of the first Preliminary Draft in 2015 to member approval of the final Tentative Draft at the 2025 Annual Meeting. During this time, drafts of the Restatement came before the Council on more than ten different occasions and were presented to the members at five Annual Meetings. As in any Restatement process, participants in the Copyright Restatement received regular opportunities to comment on all Restatement drafts, including those presented at Council and Annual Meetings,

² For this reason, the Institute does not place any sort of “disclaimer” on its work. Restatement readers understand that the Restatement represents the considered judgment of the Institute’s membership as a whole, not the unanimous view of every Reporter, member, or project participant, and the Restatement provides the analysis and citations needed to determine whether readers agree with the ALI’s assessment. Project participants who disagree with the Restatement are free to express those views publicly, and they often do in law reviews, symposia, and the media. The ALI does not object to and, indeed, welcomes this criticism. We sometimes sponsor such symposia, and, on the occasion of our 100th Anniversary, published a book including many critical reflections on our history and work. See Andrew S. Gold and Robert W. Gordon, eds., *The American Law Institute: A Centennial History* (Oxford Univ. Press 2023). Like the Restatements, scholarly works criticizing Restatements may be consulted and cited by courts and lawyers as secondary sources.

³ https://www.ali.org/project/copyright?active-tab=tab_2.

and the Reporters accepted many of their comments. Sections and drafts were revised, often multiple times, in response to feedback offered by Advisers, Liaisons, the MCG, and the Council. Members, including some who were Advisers, regularly submitted motions seeking to change drafts presented to the membership at the Annual Meeting; those motions were addressed under the ALI's Annual Meeting rules, put to the membership for a vote, or withdrawn after the movants and Reporters reached an agreement about the best path forward.

- **The Copyright Restatement is Not the First Restatement Addressing a Statutory Field.** The ALI has for decades undertaken significant efforts in areas in which there are important federal statutes. For example, our Restatements Third and Fourth of the Foreign Relations Law of the United States deal extensively with a range of federal statutes, such as the Foreign Sovereign Immunities Act and the many laws governing international trade. Our Restatement of the Law Third, Unfair Competition takes up federal trademark law enacted in the Lanham Act. Similarly, the Indian Civil Rights Act, the Indian Child Welfare Act, and the Indian Gaming Regulatory Act are major topics in our Restatement of the Law, The Law of American Indians. We recently began a Restatement of the Law, Constitutional Torts that aims to restate the law of suits for damages arising under 42 U.S.C. § 1983.

For areas of law controlled by statute, Restatements provide a resource for courts when the statutory text leaves meaningful scope for judicial interpretation and discretion. It is not the function of the Restatement of the Law, Copyright or any other Restatement to say what a better statute might look like. *A Restatement is not a model code.* Instead, the aim is to evaluate the possible interpretations of existing statutory provisions, which is exactly the inquiry that a court applying the statute would engage in. Indeed, given the structure of the federal judiciary, conflicting lines of precedent can emerge, as is the case in common-law areas, and Restatements can help judges as they attempt to resolve and understand complex and differing precedents interpreting portions of a particular statute.

- **The Restatement Does Not Present an Alternate View of the Copyright Act.** Your letter mentions concerns “about whether the Copyright Restatement would confuse readers by presenting an alternative view (including alternative ‘black letter’ versions) in conflict with established statutory federal copyright law.” As a secondary source, the Copyright Restatement cannot, and does not purport to, replace the Copyright Act. It addresses only those areas of the statute that leave room for judicial interpretation and discretion, and it includes citations to and quotes from the Copyright Act throughout. In Restatement sections that involve statutory material, the black letter quotes the statutory language as much as practicable; where the black letter summarizes statutory provisions, the associated Comments and Reporters’ Notes typically include citations and longer quotations from those provisions.

- **The Copyright Restatement Takes Account of Adviser Comments, Case Law, and the Views of the U.S. Copyright Office.** It is not the case that the Copyright Restatement Reporters had unlimited drafting discretion or were free to ignore Adviser feedback or relevant authority. The Copyright Restatement, like all Restatements, assumes the perspective of a common-law court. In the words of former ALI Director Herbert Wechsler, the Institute and its Reporters “should feel obliged in our deliberations to give weight to all of the considerations that the courts, under a proper view of the judicial function, deem it right to weigh in theirs.” Thus, the Copyright Restatement does not displace or overrule controlling statutes or precedents, and it cites relevant authorities, including the views of the U.S. Copyright Office, throughout.

As for Adviser feedback, the Reporters regularly revised the text to reflect input they received. The Reporters did not accept every suggestion that was submitted, nor could they have done so given that, as is common in Restatement projects, the broad and diverse Adviser group, Liaisons, and MCG sometimes provided feedback that pointed in opposite directions. In keeping with the ALI process, where the Copyright Restatement takes a position as to which reasonable minds can disagree, it describes competing views, acknowledges contrary authority, and sets forth the reasoning and authority that supports its approach.

- **The Copyright Restatement Meets the ALI’s Definition of a Restatement.** As the ALI’s *Style Manual* explains, “Restatements are primarily addressed to courts. They aim at clear formulations of the common law and its statutory elements or variations and reflect the law as it presently stands or might appropriately be stated by a court.” The Copyright Restatement embodies each of these criteria: it is addressed to courts, for the purpose of offering guidance on topics as to which the Copyright Act leaves meaningful scope for judicial interpretation and discretion; its black letter provisions aim to clearly formulate the relevant legal principles, using the language of the statute where appropriate and practicable; and its approval by the ALI Council and membership reflects the judgment of the ALI as a whole that its provisions reflect the law as it presently stands or might appropriately be stated by a court. Its detailed discussion of the rationale for positions taken and extensive citations of authority offer readers a means of evaluating this judgment for themselves. The ALI’s Copyright project is appropriately characterized as a Restatement.
- **The ALI Received 23 Resignations at the Conclusion of the Copyright Restatement Process.** As noted above, the Copyright Restatement Advisers, Liaisons and MCG were active and productive participants in the Restatement process. For ten years, they attended project meetings and provided written comments in response to drafts; some Advisers who are also ALI members submitted motions at Annual Meetings. Their input was welcome, and the changes it inspired made the final product better. We acknowledge and regret the resignations of several esteemed project participants, whose perspectives were a vital part of the decade-long debate.

From a group of more than 180 project participants, there were 23 resignations in the spring of 2025, as the drafting phase was drawing to a close and after the Council’s final vote of approval. Six of those resignations were from Liaisons, acting on behalf of interest groups they represented in the process. The resignation letters cited concerns about the Restatement similar to those expressed in your letter. The membership body was not dissuaded by these concerns, most of which had already been aired during the decade-long process, from approving the final draft of the project.

A list of participants who submitted written comments at the conclusion of the project can be provided upon request. All of this information was made available to project participants and the ALI membership through the project page on the ALI website. ALI President David Levi and I also addressed the discussion surrounding the Copyright project as part of our Annual Meeting remarks, before bringing the Restatement to a final vote.

- **Restatement Updates and Sales.** Your letter also asks about the process for Restatement updates and for some information about Restatement sales and marketing. The ALI produces periodic inserts that update case and statutory citations for published Restatements. In addition, in some areas—such as contracts, torts, and conflict of laws—the ALI has revisited completed projects and published new Restatements taking account of subsequent developments in the law. Project ideas are generated by our Director and Projects Committee, who consider suggestions submitted by members or others. The ALI makes its publications available to the public through third-party licensing and distribution arrangements. It does not maintain complete customer records and has not generated any promotional materials for the Copyright Restatement.

In sum, and as I said in my remarks at the 2025 Annual Meeting, the Copyright Restatement project concluded “in the usual way”: “through meticulous drafting by the Reporters, full and frank exchanges of views among the various advisory bodies, responsive drafting by the Reporters, and finally, first, Council approval, and . . . quite a few rounds of Annual Meeting approval by the membership.” The successful conclusion of this bicameral process and the overwhelming approval of the project by the Council and membership demonstrate the Institute’s judgment that the work satisfies our standards for a Restatement and will be of service and value to the judiciary and the legal profession.

While it is unusual for participants in an ALI project to resign at the end of a project after participating all the way through, our projects often generate robust debate and even controversy. ALI project participants resign from time to time, in varying numbers and for varying reasons depending on the project. In this instance, the resignation of valued project participants, while disappointing, does not undermine the Copyright Restatement’s usefulness for its intended purpose as a secondary resource for judges and others interested in how the statute has been interpreted by the courts and in any trends or differing approaches in those interpretations.

Thank you again for your interest in The American Law Institute and our Restatement of the Law, Copyright. I am grateful for the opportunity to provide you with this information, and I hope the foregoing addresses your concerns.

Sincerely,

A handwritten signature in black ink that reads "Diane P. Wood". The signature is written in a cursive style with a large, stylized 'D' and 'W'.

Diane P. Wood
ALI Director