

BOOK REVIEW**NEW DIRECTIONS IN COPYRIGHT LAW**

Edited by Fiona Macmillan and Kathy Bowrey, Edward Elgar, 2006. Volume 3, 249 pp (incl index), £59.95, ISBN 1-84542-262-7.

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The AHRC Copyright Research Network¹ presented a series of workshops and conferences over the period of the last three years. In line with the stated aims of the project, papers presented at these events are making their way into a series of edited collections under the title *New Directions in Copyright Law*; volumes 3 (edited by Fiona Macmillan of Birkbeck and Kathy Bowrey of New South Wales) and 4 (edited by Macmillan) have recently been published.

Volume 3 includes papers relating to two of the six sub-themes of the Network: traditional cultural expressions (formerly known by some as ‘folklore’) and neighbouring rights (e.g. the rights enjoyed by performers in respect of their performances, broadcasters in respect of their signals etc). Volume 4 includes papers addressing all six themes.

Significant academic attention has been paid to copyright in recent years, with many authors considering the role of copyright in the ‘digital era’.² The papers included in these volumes, though, tend to focus on specific aspects of copyright law and policy, and thus the effect is to highlight the diversity and confusion that characterises copyright law, 21st-century style.

These publications on ‘new directions’ certainly suggest to the reader that in fact, contemporary copyright law can be described, to borrow from satirist Stephen Leacock, as going madly off in all directions.³ The role of the *droit du suite* (the right of artists to receive royalties from the resale of their works) in Australian Aboriginal art (and its role in restriction and the enhancement of community rights), considered by Quiggin and the ability of ‘celebrities’ to control their image and privacy (assessed

¹ <http://www.copyright.bbk.ac.uk>

² See for example L Lessig, *Free Culture: The Nature and Future of Creativity* (London: Penguin, 2005) and R Ayer Ghosh (ed), *Collaborative Ownership in the Digital Economy* (MIT: Cambridge/London, 2005) on new and future understandings of copyright; on copyright and digital works specifically, see J Litman, *Digital Copyright* (2nd edn) (Prometheus: New York, 2006) [US] and S Stokes, *Digital Copyright: Law and Practice* (2nd edn) (2nd edn) (Hart: Oxford, 2006) [UK].

³ "Lord Ronald said nothing; he flung himself from the room, flung himself upon his horse and rode madly off in all directions." S Leacock, ‘Gertrude the governess’ in *Nonsense Novels* (John Lane: New York, 1911).

by Gibson in ‘A right to my public’) both represent significant distance travelled from the Statute of Anne. Indeed, the general tone is one of agitation for more and/or better copyright law: “what is worth copying is worth protecting” (the classic statement of Peterson J in *University of London Press v University Tutorial Press*,⁴ quoted by at least three authors in these volumes!), coupled with a very broad interpretation of ‘copying’; Netanel is a significant and persuasive dissident, arguing that copyright law must be reformed in order to mitigate its impact on freedom of expression.

Andres Guadamuz González tackles a difficult question: the use of network theory and related forms of analysis within copyright law. This is a stage beyond simply discussing ‘digital copyright’ or the application of existing concepts or statutory expressions of copyright law in a different context. Instead, he argues, we need new tools with which to approach the legal, economic and political elements of copyright; the answer, he suggests, may be in the study of network ‘power laws’ and the use of certain scientific concepts within legal research. (This is an area that is seeing a significant growth in interest - Yochai Benkler's recent book⁵ tackles this difficult area with aplomb). A related call comes from Guadamuz González's Edinburgh colleague Hector McQueen, who concludes his study of the various factors that influence ‘copyright reform’ by drawing a parallel with the role of legal research (funded under the European Union's Framework Programme 6 (FP6)) and its influence on the development of copyright law. Now that the Gowers Report (the commencement of which is discussed by McQueen) has been published, no doubt many others will look at McQueen's ideas to guide research.

The legal treatment of traditional cultural expressions (TCEs) is discussed in four essays in Volume 3, and a further paper in the neighbouring rights section touches on TCE-related issues. The whole area is fraught with all sorts of problems; Westcamp focuses on the difficulties of applying Berne Convention concepts outside of traditional understandings of authorship and rights. Indeed, many of the authors adopt a perspective that is significantly influenced by postcolonialism and the study of native and chthonic legal systems, and there is a marked awareness of potential incommensurability of ‘Western’ and ‘traditional’ concepts. The prolific Johanna Gibson, for example (who authored three papers in these two volumes) argues in “Community and the Exhaustion of Culture” that resolving TCE issues will require significant acceptance of different conceptions of land, property and culture.

Furthermore, as Blakeney explains, the various international organisations involved (the WTO, WIPO and UNESCO to name but a few of the official multilateral bodies with significant interests in intellectual property) bring different preconceptions and priorities to the table, so (just like other issues where law, culture and technology intersect) the evolving balance of power in international law may determine whether copyright law (one of the earliest areas of law to see significant international regulation in the modern era) can in fact deal with these issues. Again, a ‘multi-level approach’ is attractive; Magaisa's lengthy consideration of medical knowledge and information in Zimbabwe includes elements of history, sociology and linguistics, and is based on two years worth of field research followed by detailed theoretical analysis.

⁴ [1916] 2 Ch 601.

⁵ Y Benkler, *The Wealth Of Networks* (Yale University Press: New Haven, 2006).

The essays in these volumes are clearly written and of readable length; it has not been possible to refer to them all in this review. The series, of course, should be seen as one of six volumes, and many of the themes not dealt with in detail in these two publications (such as the ongoing challenge to fair use/fair dealing, or the growth of the Creative Commons movement) are of course addressed in other volumes, including the forthcoming fifth and sixth volumes. That said, it would certainly have been useful to include perspectives from Canada and the US in these publications (the recent Canadian text edited by Michael Geist is worth reading alongside the New Directions series for comparative purposes),⁶ and this reviewer would have appreciated hearing from the editors (in a preface or introductory essay) as to the links between the various, well-chosen papers.

Overall, the latest installments in the New Directions series will be of particular use to researchers interested in traditional cultural expressions and trade law (as it affects developing nations), but other scholars of copyright and media will find papers to interest them. The fifth volume is due for publication this year.

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⁶ M Geist (ed), *In The Public Interest: The Future of Canadian Copyright Law* (Irwin Law: Toronto, 2005).