



Book Review

Copyright Law, David Brennan, Federation Press, 2021, ISBN 978-176002-323-2.

In a review published in this Journal in 2008, Dr Matthew Rimmer considered the view expressed in Benedict Anderson's book *The True History of Copyright: The Australian Experience 1905–2005*¹ that, while said to be better drafted and better arranged, the *Copyright Act 1968* (Cth) ('*Copyright Act*') was no more than 'a younger first cousin' of the British Act of 1956.

Professor David Brennan notes that there has been no comprehensive copyright text specifically to serve the Australian market since the publication in 1977 of the work of James Lahore.² The primary purpose of the author of the present book is exposition of the current copyright law in this country but also provision of insights into the strengths and weaknesses of that system and to consider what since the 1980s has been 'wave upon wave of local surgery and augmentation driven by intermingled internal and external forces'.

With reference to the views that 'collective free for alls' provide a preferable regime to copyright protection, the author writes in the Preface: 'Professional creators and copyright dependent industries nurture our journeys through life in ways that are sometimes taken for granted — or at least underappreciated.'

This may be compared with what the late Professor Cornish saw as the development in the 19th century of literary copyright in the United Kingdom upon a 'passionate article of faith' treating 'authors as figures of original genius with powers of perception and expression ranging far beyond those of pedestrian mortals'.³

Copyright has been seen as territorial in scope. That generalisation requires reconsideration in the light of three developments considered in this book. If the reasoning of Lords Walker and Collins in their joint judgement in *Lucasfilm v Ainsworth*⁴ that an English court would adjudicate a dispute as to infringement of US copyright in the *Star Wars* helmets, be followed in Australia this would require reconsideration of *Potter v Broken Hill Proprietary Co Ltd*.⁵ Secondly, the resistance to 'parallel importation' of copyright material lawfully put onto the market in another country, notably in *Interstate Parcel Express v Time-Life International (Nederlands) BV*,⁶ has been overcome by legislation enacted in 1989, 1991, 1998 and 2003 which leave parallel importation subject to restraint only in the limited situations identified at pp 220–1 of the book. Thirdly, foreign copyright judgements may

1 Dr Matthew Rimmer, 'Book Review: *The True History of Copyright: The Australian Experience, 1905–2005*' (2008) 31(2) *Australian Bar Review* 230.

2 James Lahore, *Intellectual Property Law in Australia: Copyright* (LexisNexis Butterworths, 1977).

3 William Cornish et al, *The Oxford History of the Laws of England* (Oxford University Press, 2010) vol XIII pt 5, 879, 885.

4 [2012] 1 AC 208.

5 (1906) 3 CLR 479.

6 (1977) 138 CLR 534.

be enforced in Australia under legislation, in particular, the *Foreign Judgements Act 1991* (Cth), and, to a limited extent, at common law (ch 7.2.2).

Other significant amending and supplementary legislation is listed in ch 1 under no less than 13 subheadings and then is fully detailed in the body of the book.

Several legislative interventions, in addition to those considered above respecting parallel importation, were stimulated by judicial decisions upon the *Copyright Act* as it initially stood. *University of New South Wales v Moorhouse*⁷ established authorisation liability in the appellant for reproductions using photocopiers in its library and provoked the amendments considered in ch 7.4. The 1983 decision in *Apple Computer Inc v Computer Edge Pty Ltd*⁸ that a computer program (whether in source or object code) was not a ‘literary work’ sparked reforms enacted in 1984 and revised in 2001. This legislation is considered in ch 10.6.

The author considers that the complexity of Australian copyright law has been compounded by ‘intensely reasoned’ recent High Court authorities involving information technologies. He refers (at p 12) to *Stevens v Kabushiki Kaisha Sony Computer Entertainment*⁹ (installation of ‘mod chips’ into PlayStation consoles which allowed the playing of unauthorised copies of games, allegedly contrary to the ‘circumvention devices’ protection in s 116A), *IceTV Pty Ltd v Nine Network Australia Pty Ltd*¹⁰ (alleged infringement by reproduction of substantial parts of weekly schedules of television programmes to be broadcast by the respondent) and *Roadshow Films Pty Ltd v iiNet Ltd* (‘Roadshow’)¹¹ (whether the respondent internet service provider (‘ISP’) ‘authorised’ infringement of copyright in the appellants’ films by users of its services).

As it transpired, the plaintiffs in all three of the above cases failed in the High Court. In *Roadshow*, it was emphasised that given technological developments and changes in business methods, by 2007 the *Copyright Act* had grown to more than five times its original length and had been amended on some 50 occasions; this made it perhaps inevitable that difficult questions of construction would arise;¹² the pressures to accommodate such developments were best resolved by legislative processes rather than extreme exercise by the courts of statutory interpretation.

In ch 14.4.4, the author explains that since 2015 and the enactment of s 115A as an apparent legislative response to *Roadshow*, copyright plaintiffs may obtain from the Federal Court an order against third party ISPs, blocking access to offshore online locations which either infringe or facilitate infringement. Between 2015 and 2021, the Federal Court had received 13 such applications, all of which were successful.

Since its enactment more than 50 years ago, the 1968 Act has moved significantly from the classic structure of copyright laws. This is the product

7 (1975) 133 CLR 1.

8 (1983) 50 ALR 581.

9 (2005) 224 CLR 193.

10 (2009) 239 CLR 458.

11 (2012) 248 CLR 42.

12 Ibid 82–3 [117]–[120].

of judicial decisions and much legislative activity. The busy practitioner often will be presented on short notice with copyright disputes and needs an authoritative text to be ready at hand. In those law schools where the subject is taught to undergraduates the students need access to a stimulating study of the statute and case law.

This book answers their needs. The author has an engaging literary style which leads the readers through the conceptual thickets of copyright law. The publisher also is to be congratulated for the preparation which has gone into the production of the book and its printing in Australia.

Hon William Gummow AC