

# BOOK REVIEW

**Copyright Law**, by David Brennan, (Federation Press, 24/11/2021), 576 pp., hardback, , ISBN: 978-1-760-02323-2.

The Australian Copyright Act is complex. Enacted in 1968, the Copyright Act has been amended too many times and now is 690 pages in length. Even the section numbering is unfriendly. For example, we have sections with wonderful numbers such as s.135AOB (Making decoder available online) and s.135ZZZI (Re-broadcasts by satellite BSA licensees). Waves of technological developments have been reflected in waves of amendments to the Act. An undergraduate full semester law school subject in copyright law merely scratches the surface of the Act. Many sections of the Act have never been considered by a court. Some sections of the Act are puzzling and mysterious.

There are few significant copyright disputes in Australia these days, and even fewer go to trial. This is especially so now that American software companies, record labels and film studios are bringing fewer copyright piracy lawsuits in Australia compared to a decade or so ago. Some would say that in Australia, there are more copyright lawyers than copyright lawsuits.

David Brennan's book on Australian copyright law published at the end of 2021 has fewer pages than the Australian Copyright Act, but is far more helpful and easier to read.

Brennan is a Visiting Fellow at the University of Technology Sydney Law Faculty and has served as a long-standing Copyright Policy Consultant to Screenrights, the Audio-Visual Copyright Society in Australia. He has taught for many years, including at Melbourne University, Oxford and most recently at Monash University. This book shows Brennan's deep understanding of copyright law and explains the complexity of the law in a way easily understood.

The book also includes detailed analysis of key areas of copyright law. It is the best copyright law desk guide for practitioners who need to understand Australian copyright law.

The Foreword, by The Hon Julie Dodds-Streton QC, states: "The demanding and complex nature of the expanding technologies is necessarily reflected in the related legalisation, and the now voluminous, often dense, case law. While a technological background is still not an absolute prerequisite, important areas of copyright law are now considerably less accessible to those who lack technical expertise." Brennan spends time examining cases involving technology, such as computer-generated works, data, Javascript, and the internet.

For example, Brennan considers the important but often-overlooked copyright case *Dias Studio v Bullet Creative* (2007) 165 FCR 92 that considered, in respect of a computer program, the importance of identifying the copyright work. Is a sub-program in a computer program (e.g. a sub-program for file editing) a work in its own right, or is the only work the computer program as a whole? This is an important question, because it is relevant to the determination of whether a substantial part of the work has been copied. The smaller the work, the easier it can be to show that what was copied was a substantial part of it. (A similar question arises in relation to newspapers—is the work the newspaper, each article, or the headline? See *Fairfax Media Publications v Reed International Books* (2010) 189 FCR 109 that was referred to six times in Brennan's book). Further, in *Dias Studio*, the court also considered whether copying a later version of computer program was sufficient for a copyright claim where the work pleaded was the earlier version of that computer program. It was not. Brennan says the court's approach in *Dias Studio* was overtly rigid, but serves as a warning to copyright plaintiffs to properly plead their case as to the "work" in issue. It also led to a just outcome in that case.

The book considers "traditional" copyright works, of course, such as musical works, artistic works and films, as well as topics such as crown ownership, compulsory licences, collective societies, fair dealing and international copyright treaties. There are also chapters on moral rights and performers' economic rights, which are part of the Copyright Act but not really copyright rights.

One issue that I have with text books on copyright law, and how copyright law is often taught, is that the focus is the Act and cases. There is much to do about copyright that does not end up in court. A focus on copyright law through the lens of litigation regarding issues at the penumbra does not tell us much about day-to-day copyright law. Applied copyright law is sometimes classed as part of entertainment law or licensing law or intellectual property (IP) commercialisation, but should also be considered as copyright law—viewed from a commercial or practical sense. What happens on the run-of-the-mill day regarding copyright rarely ends up in court (at least in Australia), is rarely the subject of a judicial decision, and thus is left out of most copyright text books.

For example, a copyright and rights clearance professional working on a film production would unlikely find Brennan's book (and most other copyright law books)

to be of much practical use. In fact, such a person's view of the risk of copyright infringement and the steps to take to prevent infringement claims against the film production company is likely to be vastly different to what one would learn from most copyright publications.

Overall, Brennan's book is an excellent copyright text book. I used it as an assigned text to teach a copyright law class in the first half of this year, and it is currently the best Australian book for such purposes.

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