

Book review: David Brennan, *Copyright Law* (The Federation Press, 2021)

Benjamin P. McDermott¹

I was fortunate to have received a review copy of David Brennan's *Copyright Law* from The Federation Press. The foreword by The Hon Julie Dodds-Streeton QC wonderfully sums up the value of this publication, noting "[a]lthough the field is served by an abundance of quality case books and loose-leaf services, it has lacked a comprehensive, up-to-date monograph reflecting the development of Australian copyright law. This well-structured, clearly-written, accessibly-explained work ably fills this need."

My career in copyright law spans a relatively modest 6 years. In this time, I have found comfort in navigating the field with regular reference to Ricketson & Creswell's comprehensive looseleaf *Law of Intellectual Property: Copyright, Design & Confidential Information*.² Equally, for higher level snapshots of concepts beyond the information sheets published by the Australian Copyright Council, I have long considered Colin Golvan's book *Copyright: Law and Practice*³ essential reading. Having had the chance to complete a preliminary review of David Brennan's *Copyright Law*, I am confident that the Australian copyright community has not been given a book to replace all others. However, what has been produced is a necessary tool in the Australian copyright professional's toolkit. I suggest that if one considers Ricketson & Creswell's looseleaf a detailed and authoritative commentary on the state of the law, and Golvan's book a concise overview, one is likely to find that Brennan's book is the balanced middle point.

The structure of Brennan's publication is thematic and logical. The same can be said of each chapter of the publication. When it came to the little things, I was delighted to discover a pleasing font size, footnote referencing, a detailed table of contents preceding each chapter and a comprehensive index.

Chapters 1 to 4 detail the essential elements of copyright law. Chapter 1 begins with an introduction to Australian copyright law, detailing the origins of copyright law and the development of the Australian *Copyright Act 1968* (Cth), including the many reforms contributing to the Act's evolution. Chapter 2 covers works. The chapter begins with discussion of originality, material form and substantiality before individually discussing literary, dramatic, musical and artistic works. The chapter concludes with discussion of works of joint authorship. Chapter 3 covers subject matter other than works, with discussion of sound recordings, cinematograph films, broadcasts and published editions of works. Chapter 4 covers first ownership, co-ownership and duration. The chapter begins by discussing ownership rules relating to works and subject matter other than works before discussing Crown ownership, ownership of international organisations and co-ownership. The chapter proceeds to discuss the duration of copyright as it relates to works and subject matter other than works before discussing the term of

¹ BMus(Hons I), BA (UNSW); Management Committee member, *Copyright Society of Australia*; Juris Doctor candidate, *University of Sydney*.
² Thomson Reuters, *Law of Intellectual Property: Copyright, Design and Confidential Information*
³ Colin Golvan SC, *Copyright Law and Practice* (The Federation Press, 2007).

Crown copyright and international organisations' copyright. I found the discussions surrounding international organisations especially novel and interesting.

Chapters 5 to 10 detail the use of works protected by copyright. Chapter 5 covers derivation and substantial part. I found the discussion on indirect causal connection and the concluding propositions on substantial part remarkably clear. Chapter 6 covers exclusive rights. The chapter begins by discussing the meaning of "to reproduce", "to copy", "to film or record a broadcast" and "to make a facsimile copy". The chapter proceeds to discuss the meaning of "to reproduce" in relation to works, and the meaning of "to copy" in relation to subject matter other than works. The chapter continues to discuss the meaning of "to publish", "to perform in public", "to cause to be heard or seen in public", "to communicate to the public", "to re-broadcast", "to make an adaption" and "to reproduce, publish, perform or communicate the adaption" before concluding with discussion of the meaning of "to enter into a commercial arrangement". Chapter 7 covers infringement and related actions. The chapter begins with a discussion of territoriality before discussing direct infringement, infringement by authorisation and dealing in articles made by infringement. The chapter continues to discuss liability relating to technological protection measures (TPMs), joint tortfeasor liability and concludes with a discussion of groundless threats in relation to copyright infringement and TPMs. Chapter 8 covers assignment, transmission and licensing. The chapter begins with discussion of the formalities for assignments and exclusive licences, informal purported assignments and transmission under law before discussing voluntary licensing and assignments pre-dating the 1968 Act. Chapter 9 covers compulsory licences, Crown use and collective licensing oversight. The chapter begins by distinguishing compulsory licences generally and those with and without a central administering body. The chapter continues to discuss Crown exploitation of copyright under Part VII, Division 2 before concluding with a discussion of licence scheme oversight. I found the discussion surrounding the Copyright Tribunal of Australia to be especially useful. Chapter 10 covers exceptions. The chapter begins with a discussion of implied licences and fair dealing before discussing the position of artistic works under Division 7 and Division 8 of Part III and the position of computer programs under Division 6A of Part III. The chapter concludes with a discussion of private use and a useful summary of other exceptions. I consider this chapter to be my favourite in the publication. In addition to a desirable level of detail surrounding the fair dealing provisions, there is impressive recency of case law in the discussion of parody and satire, with discussion of the decisions of *Universal Music Publishing v Palmer (No 2)* and *AGL Energy v Greenpeace Australia Pacific*.

Chapters 11 and 12 detail related rights. Chapter 11 covers performers' economic rights. The chapter discusses the operation of the Part XIA regime before concluding with a discussion of copyright ownership in sound recordings. Chapter 12 covers the moral rights of authors and performers. The chapter begins with discussion of the legal nature of the rights and the principles of liability before discussing positive attribution, false attribution and integrity of authorship and performership. The chapter concludes with a discussion of defences as they relate to moral rights infringement. I found the structure of this chapter especially clear for what can otherwise be an opaque area of the law.

Chapters 13 to 15 are stand alone and cannot be grouped into a unifying theme. Chapter 13 covers jurisdictional attachment (otherwise known as 'connection'). The chapter begins by distinguishing direct attachment and attachment by virtue of status as the Crown before discussing attachment by national treatment relating to copyright subject matter and performances since 1 May 1969 and 1 October 1989 respectively. The chapter proceeds to discuss attachment by virtue of status as a Declared International

Organisation before concluding with a discussion of copyright subject matter subsisting immediately before commencement of the 1968 Act under Part XI, notably distinguishing subject matter created pre-1 July 1912. Chapter 14 covers civil litigation and remedies. The chapter begins with discussion of standing to bring suit and the jurisdiction of Australian courts before discussing orders separate from a final trial, including *Norwich Pharmacal* orders, *Anton Piller* orders, interlocutory injunctions and offshore online location blocking injunctions under s 115A. The chapter proceeds to discuss evidentiary presumptions and final trial remedies for infringement of rights under Parts III and IV and for breach of Part V, Division 2A. The chapter concludes with discussion of remedies and special remedial rules, with distinction made between moral rights and performers' rights. Finally, chapter 15 covers peripheral regimes and criminal law. The chapter begins with discussion of the peripheral regimes, including the *Designs Act 2003* (Cth), the *Public Lending Right Act 1985* (Cth), the *Circuit Layouts Act 1989* (Cth), the *Resale Royalty Rights for Visual Artists Act 2009* (Cth) and the News Media Bargaining Code 2021. This final chapter of the book concludes by discussing criminal law liability.

Overall, I found this publication to be of excellent quality. I am confident suggesting that it would be of great use to copyright professionals, students and anybody else that seeks to gain a deeper understanding of the development and current operation of Australian copyright law.