
This title from two academics (Murray of Queen's University English Department and Trosow of Western's Faculty of Information & Media Studies and Faculty of Law) attempts to serve the dual purpose of being a user's guide to copyright as well as an argument about copyright policy. The book is divided into four parts: a short section on philosophical and economic justification for copyright; a section on the Copyright Act and recent legal decisions; the longest section, which treats several creator and user communities in a series of short chapters; and a final section that proposes alternatives to the Anglo-American copyright legal tradition. Each chapter contains a short list of useful resources to aid creators and users in understanding copyright and the volume includes a short bibliography. There are also eleven tables on aspects of law among the nineteen chapters, including duration of copyright in various content forms, copyright and education, forms of intellectual property and other very useful information. Taken together, the resource citations, the tables, and the bibliography will assist both creators and users in understanding the complexity of the law in Canada.

The authors mince no words in stating their own position on copyright law: it is, for the most part, a corporate conspiracy aimed at limiting the ownership rights of creators and the rights of consumers: "Throughout history, it is the larger book trade – today the 'cultural industries' or 'tech sector' – that has demanded expansion of copyright, often using the rhetoric of authors' right to do so," (p. 21).

The authors correctly point out that the purpose of copyright is to protect, for a limited period of time, the ownership of an original work that shows an exercise of skill and judgement in creation, housed in a fixed format. They challenge the notion of originality, claiming that there is little that is original in the creative arts; most writing, film-making and sound recording being built upon the creations of predecessors (p. 43). So how do new creators make use of a cultural heritage in a manner that respects the ownership rights of others? This is the countervailing element of the copyright tradition: the notion that permits uses for education, criticism and reporting gathered under the poorly-defined concept of users' rights.

These are the exceptions to copyright found in sections 29 (fair dealing and educational institutions) and 30 (archives, libraries and museums) of the Act. Unlike its U. S. counterpart, the Canadian Act does not set forth 'tests' for a defence of fair dealing. For this reason, advocates of 'fair copyright' in Canada (Murray operates a blog titled, 'faircopyright') have spent the past four years praising the Supreme Court of Canada decision in **CCH Canadian Ltd. v Law Society of Upper Canada.** That decision effectively read into interpretation of the Act six questions to determine whether the dealing is fair or foul: the six questions are remarkably similar to the fair use test set forth in the United States legislation. This should assist in expanding the notion of fair dealing (one of the
Court’s balancing efforts), but it does not satisfy the authors: "...Canada’s fair dealing provisions have major limitations. Before you can get to the analysis of "fairness" you have to show that, strictly speaking, the use was made for the purpose of research, private study, criticism, review or news reporting," (p.122).

Much of what they write sounds reasonable and few would argue with their claim that users should fully exercise the rights granted under the legislation. It is when Trosow and Murray begin to expand their claims to uncharted territory that a reader may pause before accepting their argument. For example: "In principle, we see no contradiction between taking a generous view of users’ rights and enforcing commercial infringement: it is absolutely crucial to distinguish the legitimate exercise of users’ rights from industrial-scale criminal copyright infringements – as far too little public discussion does," (p. 99). This ‘generous view’ is better explained in the policy prescriptions section: "Statutory damages need to be restricted if not eliminated because they subject users to disproportionate risks and end up creating a chilling effect on the full exercise of users’ rights"(p. 206). A court, having found a use to be infringement, awards damages to the aggrieved party – but any award should be limited (better yet, eliminated) so as not to inhibit individuals or institutions that engage in infringing activity. The Act sets forth a minimum fine of $500 for statutory damages, subject to approval of a court. This is a modest penalty when compared to the possible fine and imprisonment for criminal infringement. In short, the legislation already properly distinguishes between criminal activity and civil remedies. The true sense of their argument is that by limiting infringement awards, it is hoped that copyright holders will simply give up and not enforce their rights.

Part Three of the book covers several areas of copyright application including craft and design, digital rights management, film and video, journalism, music, photography, visual arts and Web sites. Let's concentrate on the two most relevant to our audience, education and libraries. While educational bodies may make the proper noises on users’ rights, "[t]hey often pay hefty license fees instead, imposing costs on taxpayers or students that are not always easy to justify, or they enact policies that restrict students' and teachers’ activities" (p. 116). The educational exceptions set out in section 29 are too weak for the authors: "We hope that teachers are indeed exercising their common sense in the implementation of these exceptions and seeing past them to fair dealing,"(p. 119). What's worse, the schools rely on the educational exceptions rather than the more rigorous (but potentially liable) fair dealing procedure set forth in CCH. All talk of exceptions is useless, Murray and Trosow write: "our position is that specific exceptions will always be inadequate to the practice of teaching and learning...We are concerned that such an exception may be taken to imply that fair uses not covered by exceptions are infringing," (p. 125). The point made in CCH was that an application for fair dealing (not 'fair use') could be employed prior to recourse to the exceptions, but that activities not covered by either are infringements. Why shed the protections afforded by the exceptions? Would
schools not be better served by attempting to expand the exceptions to deal with digital content?

The library community has been one of the few steadfast champions of users' rights. But it too faltered at the final siege in the 1997 reform and "slid into a period of resignation and acquiescence in which users' rights were given short shrift and the demands of the collectives were routinely obeyed without much in the way of organized resistance." CCH, which was largely a case concerning library uses of copyrighted materials, has provided a "major victory for libraries, clarifying that...librarians acting on behalf of patrons may "stand in their shoes" for purposes of helping them use their fair dealing rights..." (p. 145). Here is section 30.2 (1) of the Copyright Act: "It is not an infringement of copyright for a library...or a person acting under its authority to do anything on behalf of any person that the person may do personally under section 29 or 29.1" – What needs clarification here?

The authors make the case for a future of copyleft, public funding and commons building presenting a radical alternative to corporate demands "to legislate further restrictions on the productive and transformative uses of intellectual resources," (p. 203). Fair dealing should be 'open-ended" they write, and maybe there is little point in even trying to define it in legislation. One must acknowledge (if not completely accept) the authors' claim that copyright legislation cannot possibly anticipate nor legislate the multifarious manners in which content is and will be acted upon by a generation of creator-users, but does saying so really mean that the protection afforded to copyright owners (including the nefarious multinational entertainment industries) has passed its shelf-life?

A recent Norwegian study (Hietanen 2008) suggests that while half of peer-to-peer music file sharers consider their activity morally wrong, they intend to continue in their state of sin. I suspect that most library users, at least those in academic libraries, dropped their moral qualms some time ago. The most recent in a series of articles in SCRIPT-ed on the subject of 'Copyright and research', (Velterop 2007) suggested that there will soon not be an economic (or profit) argument for copyright in journal articles. The loss of both the exclusivity of publication that journals formerly enjoyed, and the author's "payment" of copyright in return for the 'badge of acceptance' offered by an elite journal, may well signal the end of the profit motive. This is much the same argument made by the Open Access advocates following the OA decisions of the funding agencies and the recent Harvard University vote (Suber 2008). With the loss of an economic incentive, a fear of punishment, and a sense of moral shame, can there be any sustenance left for copyright?

There is no doubt that the argument put forward by Trosow and Murray will find an audience in the library community, and in the wider society. If you are looking for a guide, that is, "a book of instruction or information for beginners or novices" (OED), to assist you in administering the Copyright Act as it now pertains in your
library environment, this is likely not your first choice. Try Wanda Noel's 1999 work, or some of the publications of the Canadian Intellectual Property Office. Nor is it, I would argue, a fair assessment of the case for copyright, a careful analysis of the balance of interests found in the Copyright Act or in the CCH decision, but that is clearly not the intention of the authors. If, on the other hand, you have already accepted that copyright is a dead letter, there is much in this volume to bolster your argument. It is a witty, fast-paced call to action, and, given the speculation about the current government's intention to amend the Copyright Act to bring it in line with the WIPO treaty obligations, a timely piece of agitprop rallying "organized resistance".

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Velterop, Jan. 'Copyright and Research: A Different Perspective,' SCRIPT ed 4. 4 (September 2007), and see earlier articles by Taylor (4:2) and Adams (4:3).