

**Kathy Bowrey, *Copyright, Creativity, Big Media and Cultural Value: Incorporating the Author* (Routledge, 2021) 228 pp.**

**By Marie Hadley**

In *Copyright, Creativity, Big Media and Cultural Value: Incorporating the Author*, legal historian and intellectual property scholar Professor Kathy Bowrey provides a socio-legal account of the history of copyright in the publishing, film and music industries, with a focus on the late Victorian era to the mid-twentieth century. Key copyright developments, including the introduction of the *Berne Convention for the Protection of Literary and Artistic Works* (1886), the UK-US settlement over trans-Atlantic copyright piracy (1891), and the modernisation of British copyright legislation (1911), are contextualized against the development of mass media forms of cultural consumption with attention to national identity, market forces, the machinations of Empire, global economic developments, industry pressures, and technological change, amongst other factors. The connections drawn between legislative activity and cultural and political activity are nuanced and insightful, however, it is the historical materialist methodology that is a particularly welcome addition and make the book a most significant contribution to law and society scholarship *and* copyright historiography.

Throughout the book authorship is centred, approached as a real, lived experience grounded in the ‘ideational and contractual expressions’ of successful artists (p.2). Generous excerpts from original archival research revealing of the business affairs, contractual negotiations, and financial outcomes of a suite of renowned authors including poet John Milton (1608-1674), novelist Arthur Conan Doyle (1859-1930), operatic singer Dame Nellie Melba (1861-1931), and band Radiohead (active from 1985-), provides insight into how specific authors leveraged their outputs as a commodity form over the course of their careers and industry-specific dynamics at key historical moments. Attention

to the transactional aspects of rights exploitation in practice supports the central argument that the evaluation of creative efforts is shaped by commodity relations, and these relations are not simply informed (or constrained) by the content of formal legal rights or periods of legislative activity. “Incorporating the author”, to borrow a phrase from the book’s title, reminds that legality exists in the way in which intellectual property rights are understood and deployed in everyday engagements, interactions, and negotiations, as much as formal legal spheres, and particularly so during times of social, cultural, and technological change.

The book is divided into seven chapters. The first two chapters challenge existing approaches to copyright historiography and establish the concern with authorship, material business practices, and the lived experience of law. The five chapters that follow advance the socio-legal project by critically considering how the author came to be incorporated in various commercial publishing, film, and music empires throughout the twentieth century and the consequences for national cultural industries and diverse creators. Close reference to primary sources such as contracts and the business correspondence of range of actors such as authors, industrialists, entrepreneurs, corporate managers, agents, consumers, advocacy bodies, and politicians is made throughout.

Chapter One, ‘What is the significance of authorship in copyright?’, introduces the value of incorporating author agency and business practices of the global book, music and film industries into a modern history of the media industries. The notion of a fixed author subject is destabilized and authorship is defined as a normative consideration existing at the interface of private property rights, contract, and freedom of expression: a ‘cultural, political, legislative *and* business activity’ (p.2, emphasis in original). Intellectual property is defined beyond a top-down phenomenon as a site of ‘material interactions in cultural, economic and political, as well as legal-technical contexts’ (p.1). The intention is to ‘bring

to light the dynamic and complex layers of negotiation that affect the cultural economy’ and, in doing so, disrupt ‘simplistic ideas about what copyright law is and what it does’ (p.5).

Chapter Two, ‘Revisiting author theory in the domain of law’, offers a historical recontextualisation of author theory by exploring the socio-legal and economic implications of the early literary property right. The impact of postmodern literary scholarship upon the idea of “author as owner” in civil society, Parliament, and case law reasoning is traced, before being critiqued as insufficiently attentive to the ‘value of copyright in practice’ (p. 25). An investigation of how commodity relations affected the evaluation of literary efforts of authors such as Renaissance poet John Milton and Romantic poets William Wordsworth (1770-1850) and Samuel Taylor Coleridge (1772-1834) follows. The rise of the gentleman as both an artist and a ‘man of business’ (p.22) (in private, in least) during the late nineteenth century is a key area of discussion, contributing to the challenge to the ‘imagined dichotomy that distinguishes aesthetic from commercial value’ (p. 10).

Chapter Three, ‘A tale of three literary copyrights’, analyses how copyright was transacted by three novelists credited for the development of the detective story throughout the late nineteenth century – Fred Fergus (1847-1885) (who wrote under the name of “Hugh Conway”), Fergus Hume (1859-1882), and Arthur Conan Doyle. A description of the sensation novel (the proto-detective story) and the materiality of mass market literature, precedes a discussion of the relationship between the contractual agreements of the three mentioned authors and the commodity forms that their work took. The impact of serialisation rights, dramatisation rights, and rights transfers between author and publisher and between publisher and publisher, upon understandings of the properties of copyright and opportunities availed are explored. Surprising insights from the archives are revealed,

including that both Fergus and Hume successfully negotiated further payments from publishers for their famous stories, *Called Back* and *The Mystery of a Hansom Cab* respectively, *after* they had sold the entirety of their copyright (p. 30) and that Doyle did not treat his famous characters Sherlock Holmes and Watson as his personal property or seek to control their representation in stage productions (ironic given the recent controversy over the representation of Holmes' traits in Netflix's 2020 film *Enola Holmes*) despite his recognition of the commercial advantages of serialisation (p.56). The way in which copyright generated significance and value through a process of commodification is shown, but it is the entertainment value of the personal stories of these authors (and Hume's melodramatics especially so) that is a standalone highlight.

Chapter Four, 'Imperial copyright and its costs', explores the significance of copyright's imperial heritage and the power dynamics at play during the emergence of international copyright, following Great Britain's signing of the *Berne Convention* in 1886. The focus is on how the Trans-Atlantic settlement over American piracy in 1891 transformed London and New York publishing houses abroad by securing British copyrights in the US, and the consequences for the profitability of independent publishing in Australia, New Zealand and Canada. An account of the international copyright advocacy of author organisations such as the Society of Authors (est. 1884) and the American Copyright (Authors) League (est. 1883), and celebrity authors such as Hall Caine whose speaking tour of Canada contributed to cementing the authority of London publishers over the Canadian market, is made. The way in which this advocacy tied universal copyright to notions of 'the progress of civilisation and the moral order of the universe' (p. 79), and was supported by authors in the colonies despite the issues it caused for rights management over the life of the copyright term, is revealing of the political nature of copyright expansion. Ironically, the valorisation of the role of the author in

civilized society helped to embed significant power asymmetries in the international copyright infrastructure: namely, the consolidation of power in transnational firms in the publishing industry, the legacy of which is significant market distortions and poor author returns. After reading this chapter, one cannot but help but be sceptical of law reform advocacy today that seeks to defend the status quo in the name of author's rights.

Chapter Five, 'Print capitalism meets Hollywood. The work of industrial authorship', considers how authors and publishers responded to the emergence of film and the growth in international film distribution. The complicated relationship between literary copyright, performance rights and dramatic adaptation during the nineteenth century is outlined prior to discussion of the impact of the rise of multi-national film combines in the twentieth century on the negotiating power of authors and playwrights with regards to film adaptation. Industry collusion around the introduction of standard contract terms to control the Australian exhibition market, as secured through industry associations such as the Motion Picture Producers and Distributors Association of America (MPPDA), is posited as a key factor influencing the exclusion of authors 'from the most important sites where the broader terms of their participation in the new cultural markets was being determined' (p. 135). Industry association responses to censorship regulations introduced in Australia under the *Customs Act 1901* (Cth) are also considered and framed as a strategic attempt to avoid 'broader regulatory scrutiny of the terms of trade' (p. 133). The private deal-making of American film combines expanded the 'global footprint of Hollywood while standardising international terms of trade', disrupting print markets and leaving authors with 'little more than a right to negotiate with publishers over the applicable royalty for a film adaptation, if, and only if, they could assert a film right at all' (p. 135).

Chapter Six, 'Why does a gramophone maker deserve a copyright? The role of celebrity, women and consumer markets in the recording industry', provides a feminist

reading of the history of the recording industry. The career and fame of Australian opera singer Dame Nellie Melba is used to explore the entry of the gramophone into the mainstream of cultural consumption and the development of a sound recording right. The social and interpersonal relations that underpinned Melba's business and legal transactions, and their relationship to corporate agitation for law reform, are explored in rich detail. The pressure exerted upon Melba by her "press agent" boyfriend, the playwright Haddon Chambers (1860-1921), to record with the Gramophone Company and the secret commissions he secretly earned, is a discomfiting example of gender privilege transacted within the industry. The most powerful contribution of the chapter, however, is the connection that is drawn between Melba's experiences and contemporary power dynamics within the music industry, including those faced by high-profile female artists like Kesha and Taylor Swift seeking to retain (or regain) control over their artistic expression, image, royalties and back catalogues. The chapter's concluding paragraph states the case for the need to confront the past to build a more inclusive future in the music industry, and is worth quoting in full:

From its earliest days, what has been transacted in the recording industry is not patent or copyright rights. What has been transacted and disseminated alongside the music has been a gendered construction of image, name and persona that influences our understanding of the cultural value of creativity and individual contributions to it. To address the current constraints faced by women and significantly change the culture of the industry we need to stop pretending that the current situation is simply the result of accumulated individual decisions made by men over time. Addressing institutional discrimination is not about changing attitudes along, but more critically considering the history of the legal objects and subjects of the trade. One place to start is to ask ourselves why there has been so little change from the basic terms and conditions of Melba's early 1900 contracts to those of the everyday. (p. 180)

Chapter Seven, 'Why Margaret Atwood, Radiohead and Banksy are not anti-copyright', builds upon this linkage between the past and the present by connecting the history of the culture industries in the preceding chapters to 21<sup>st</sup> century critiques of copyright. The anti-

commercialist copyright positions of Canadian poet and author Margaret Atwood (1961-), British recording artists Radiohead, and pseudonymous street artist Banksy (active from the 1990s-), demonstrate the continuing value of curating distinctive authorial identities within the culture industries, regardless of whether or not choices about the terms of the distribution of their outputs are transgressive. Radiohead's *In Rainbows* album release on the band's website in 2007, that did not require a set payment and occurred without the approval or support of their label EMI, might have been positioned to challenge corporate control but it, like other earlier examples of authorial activity discussed in the book, confirms that artists that exercise a high degree of agency in considering the terms of the incorporation of their authorship into commodity forms are most likely to thrive. Authors in the publishing, film and music industries have been buffeted by external and industry factors over time, but they are not and have never been, the passive subjects of law. As long as they control the connection to the commodity forms their work takes by managing their copyright, they will have the opportunity to leverage success.

Overall, *Copyright, Creativity, Big Media and Cultural Value* is a tightly argued and informative historical account supported by meticulous archival research. It challenges responders – both lay and academic – to re-evaluate their assumptions of copyright's function and significance in creative industries and the relevance of commodity relations to the evaluation of creative efforts. The book also provides, in my opinion, a model for how legal scholarship should be done – local and contextual, with legislative activity refracted through the lens of individual experience, creative practices, business practices, and political activity. I sincerely hope that more intellectual property scholars adopt this methodology blueprint in future.

I heartily recommend this book to those interested in legal history, copyright law and policy, media studies, popular culture, the nexus of law and society, and socio-legal methodologies.