

Book Reviews

***On the Origin of the Right to Copy* by Ronan Deazley Hart Publishing, Oxford and Portland Oregon, 2004**

This book begins in the middle of what seems an alarmingly elliptical argument amongst copyright historians about the significance of the cases, Acts and petitions of the early 18th century. However, it is worth persevering, and after reading the rest of the book, the introduction is somewhat more comprehensible. Deazley's argument, summed up at the very end, is that the early development of copyright law "was primarily defined and justified in the interests of society and not the individual", and was at the outset "fundamentally concerned with the reading public, with the encouragement and spread of education, and with the continued production of useful books".

The book provides a detailed and often intriguing analysis of the cases and legislative developments over the 80-year period covered by the book. It begins with the series of Licensing Acts in the late 1600s, which Deazley characterises as a bargain struck between the Government and the Stationers (printers and publishers): the Stationers received protection for their books, in return for allowing the Government to check all books and censor any seditious content prior to publication. The book traces the arguments surrounding these Acts and the calls for their continuance or replacement, in the last years of the seventeenth century – including some strikingly modern-looking proposals by John Locke, who argued for a period of protection of between 50 and 70 years from printing, and rejected the view that contemporary printers should have a monopoly on printing "copies or writings of authors who lived before printing was known or used in Europe".

The strongest parts of the book are those dealing with the Statute of Anne in 1709 and its immediate aftermath. (The inclusion of the text of the Statute in an Appendix is a helpful touch.) Many writers have noted that the focus of the legislation and debate up to and including the Statute was primarily concerned with protecting printers and publishers rather than individual creators. Deazley takes issue with the view that this was all that was achieved by the Statute. He argues that the Statute's provision for duration of copyright (an initial period of 14 years, after which the rights would revert to the author, if living, for a further 14 years) indicates an intention to benefit authors specifically.

Deazley outlines cases dealing with various issues not addressed in the Statute. These include remedies in the form of applications for discovery and accounts of profits; protection of the unpublished manuscript (since the Statute only addressed published works); and protection for publishers of ancient or classic texts. Other issues covered in these early cases included the still vexed question of the substantial part, or how much of a work can be used without permission; and how altered or abridged works should be treated.

The largest proportion of the book concerns the very long and highly complex disputes following the Statute concerning the legal origin of copyright: was it a pre-existing (and perpetual) common law right or one that had no existence outside the legislation? The significance of this debate was that the protection offered by the Statute was limited both in scope and remedies, and contingent upon registration, leaving many aggrieved litigants unable to claim any, or sufficient,

remedies. Ultimately this question was posed to the House of Lords, whose decision was that there was no common law copyright.

The cases concerning this issue, the individual views of the peers and judges in the House of Lords, and the varying accounts of contemporaneous and subsequent commentators, are examined and analysed in great detail. By Deazley's account, the House of Lords was presented with "two sides, six counsel, four speakers, five questions, twelve judges delivering 11 opinions over the course of seven days; one proposal, five further comments, a four to one split, one vote" over a couple of weeks. It is easy to sympathise with the peers who, according to Deazley, may have failed to understand the judges' opinions or even the questions before them. Deazley himself takes the view that the Statute of Anne was "not a legislative endorsement of a pre-existing property right, but instead, the striking of a bargain designed for the benefit of author, bookseller and the reading public".

Deazley's close attention to the sources allows him to delineate the concerns, economic imperatives and even personalities behind the shifts of focus in these years: for example, the publishers' tactical shifts between litigation and pressing for legislative change. He highlights major conceptual leaps that allowed the development of modern copyright law, such as the recognition by the Engravers (in proposing the 1735 Act to protect their work) of a distinction between ideas and expression; and the recognition in 1741 that the right to make copies could be separated from ownership of the physical copy (*Pope v Curl*).

It is striking that most of the hotly debated issues today concerning copyright in the digital context are, in all essentials, unchanged from the debates and concepts (and misconceptions) of 300 years ago. The general public still has difficulty with the concept that ownership of a physical item is separate from the right to copy it. The arguments between creators, publishers and apologists for the right to use copyright material are hardly more sophisticated now than in the 18th century, despite the social, technological and economic changes since that time.

This leads me to wonder whether the digital revolution has in fact changed the copyright world as profoundly as some would have us believe. Obviously, digital technology has radically changed the way material is distributed, and businesses that failed to adjust their business plans have done so at their peril. The evolution of "pure" content in digital form has once again raised the conceptual difficulty most people have in understanding and valuing the material itself (as opposed to the physical paper or plastic disk on which it used to be presented). The central issue – how to ensure creators and producers have sufficient incentive to keep producing and distributing culturally important material – is unchanged.

As is probably clear from this review, this is not a book for the casual reader. Even for someone with a serious interest in copyright, the writing is occasionally obscure, and some of the key information for understanding the early chapters is tucked away in the footnotes. Nevertheless, this is a valuable examination of the early stages of copyright, and interesting not only for its historical insights but also for the light it sheds on copyright debates today.

Helen Dakin