

Copyright Exceptions

The Digital Impact

Robert Burrell and Allison Coleman



CAMBRIDGE STUDIES IN
INTELLECTUAL PROPERTY RIGHTS

Copyright Exceptions: The Digital Impact

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CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS

The Edinburgh Building, Cambridge, CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

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First published 2005

Printed in the United Kingdom at the University Press, Cambridge

Typeface Plantin 10/12 pt. *System* L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

ISBN 0 521 84726 5 hardback

¥ 969.02

Copyright Exceptions: The Digital Impact

Copyright 'exceptions' or 'users' rights' have become a highly controversial aspect of copyright law. Most recently, member states of the European Union have been forced to amend their systems of exceptions so as to comply with the Information Society Directive. Taking the newly amended UK legislation as a case study, this book examines why copyright exceptions are necessary and the forces that have shaped the present legislative regime in the United Kingdom. It seeks to further our understanding of the exceptions by combining detailed doctrinal analysis with insights gained from a range of other sources. The principal argument of the book is that the United Kingdom's current system of 'permitted acts' is much too restrictive and hence is in urgent need of reform, and that paradoxically the Information Society Directive points the way towards a much more satisfactory approach.

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For Gita and Amelia
Elizabeth and Sarah

Preface

The idea for this book arose out of conversations we had while we were both working at the University of Wales, Aberystwyth. At the time plans for a European Directive to deal with copyright in the 'information society' were at an early stage, but it was already apparent that copyright users were going to struggle to influence the legislative process. We were also concerned that plans for European harmonisation were premature, given that significant doubt remained (and still remains) about some of the directions in which technological developments were taking us. At the same time, however, we did not share the outright opposition expressed by some to any suggestion that copyright exceptions might be harmonised in Europe. In particular, it seemed to us that the United Kingdom's permitted act regime was much too restrictive, and that European harmonisation might provide an opportunity to revisit the entire system of copyright exceptions to an extent that was unlikely to arise in the absence of European intervention in this area.

Our plans for this book have changed considerably since our initial discussions and we have benefited from talking about our ideas with a number of people, including Anne Barron, Lionel Bently, Huw Beverley-Smith, Bill Cornish, Susan Davies, Paul Mitchell and John Phillips. Nevertheless, many of the themes that sparked our interest in this project have remained more or less consistent. We have touched on these themes and on some of the other ideas that inform this work in earlier publications. In particular, it should be noted that Chapter 9 of this book is based on an article written by Robert Burrell and published in the *Intellectual Property Quarterly* in 2001. In writing this book Allison Coleman took principal responsibility for Chapters 4 and 5 and Robert Burrell took sole responsibility for the remainder of this work. We have endeavoured to state the law as at 1 February 2004, but where possible we have tried to take account of later developments.

We are indebted to a number of people for the assistance they provided us during the writing process. In particular we should like to take this opportunity to thank Lionel Bently, Bill Cornish, Peter Drahos, Michael

Handler, Gita Sarda, Brad Sherman, James Stellios and Adrienne Stone for reading and commenting on drafts; Susan Davies, James Hutton and Paul Mitchell for helping with the research; and the Australian National University's Faculties Research Grant Fund and the Monash University Travelling Fellowship Scheme for their financial support for elements of this project. We should also like to thank the Grains Research and Development Corporation and the Rural Industries Research and Development Corporation for their ongoing support for the Australian Centre for Intellectual Property in Agriculture. Finally we should like to thank the staff at Cambridge University Press, in particular Finola O'Sullivan, Brenda Burke, Annie Lovett, Jane O'Regan and Philippa Youngman for their hard work and efficiency.

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Abbreviations

AC	<i>Law Reports, Appeal Cases</i>
AIPJ	<i>Australian Intellectual Property Journal</i>
AIPLA	<i>American Intellectual Property Law Association</i>
All ER	<i>All England Law Reports</i>
ALR	<i>Australian Law Reports</i>
App Cas	<i>Law Reports, Appeal Cases</i>
Atk	<i>Atkyns' Chancery Reports</i>
Bently and Sherman	L. Bently and B. Sherman, <i>Intellectual Property Law</i> (Oxford: Oxford University Press, 2001)
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works
BT	Board of Trade
CAB	Cabinet Office
CDPA	Copyright, Designs and Patents Act 1988
Ch	<i>Law Reports, Chancery Division</i>
Cox	<i>Cox's Equity Cases</i>
CLR	<i>Commonwealth Law Reports</i>
CMLR	<i>Common Market Law Reports</i>
Computer Program Directive	Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs
<i>Copinger</i>	K. Garnett, J. Rayner James and G. Davies (eds.), <i>Copinger and Skone James on Copyright</i> , 14th edn (London: Sweet & Maxwell, 1999)
Cornish and Llewelyn	W. Cornish and D. Llewelyn, <i>Intellectual Property: Patents, Copyright, Trade Marks and Allied</i>

	<i>Rights</i> , 5th edn (London: Sweet & Maxwell, 2003)
CPR	<i>Canadian Patent Reporter</i>
CrAppR(S)	Criminal Appeal Reports (Sentencing)
Database Directive	Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases
DR	<i>European Commission of Human Rights Decisions and Reports</i>
<i>Droit de Suite</i> Directive	Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art
East	<i>East's Term Reports, King's Bench</i>
ECJ	European Court of Justice
E-Commerce Directive	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market
ECR	<i>European Court Reports</i>
EEA	European Economic Area
EGLR	<i>Estates Gazette Law Reports</i>
EHRR	<i>European Human Rights Reports</i>
EIPR	<i>European Intellectual Property Review</i>
EMLR	<i>Entertainment and Media Law Reports</i>
EntLR	<i>Entertainment Law Review</i>
EnvLR	<i>Environmental Law Reports</i>
Esp	<i>Espinasse's Nisi Prius Reports</i>
EU	European Union
EWCA Civ	Court of Appeal Civil Division
F	<i>Federal Reporter</i>
F Supp	<i>Federal Supplement</i>
FCA	Federal Court of Appeal (Canada)
FCT	Federal Court of Canada, Trial Division
FSR	<i>Fleet Street Reports</i>

Guibault	L. Guibault, <i>Copyright Limitations and Contracts: An Analysis of the Contractual Overridability of Limitations on Copyright</i> (The Hague: Kluwer Law International, 2002)
HC	House of Commons
HL	House of Lords
HO	Home Office
IFPI	International Federation of the Phonographic Industry
IIC	<i>International Review of Industrial Property and Copyright Law</i>
Information Society Directive	Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
IPJ	<i>Intellectual Property Journal</i>
IPQ	<i>Intellectual Property Quarterly</i>
IPR	<i>Intellectual Property Reports</i>
KB	<i>Law Reports, King's Bench</i>
Laddie et al., 2nd edn	H. Laddie, P. Prescott and M. Vitoria, <i>The Modern Law of Copyright and Designs</i> , 2nd edn (London: Butterworths, 1998)
Laddie et al., 3rd edn	H. Laddie, P. Prescott, M. Vitoria, A. Speck and L. Lane, <i>The Modern Law of Copyright and Designs</i> , 3rd edn (London: Butterworths, 2000)
LCO	Lord Chancellor's Office
LJ Ch	<i>Law Journal Reports, Chancery</i>
LO	Law Officers' Department
MacCC	<i>MacGillivray's Copyright Cases</i>
NZLR	<i>New Zealand Law Reports</i>
QB	<i>Law Reports, Queen's Bench</i>
Rental Right Directive	Council Directive 92/100/EEC of 19 November 1992 on rental and lending right and on certain rights related to copyright in the field of intellectual property

Ricketson	S. Ricketson, <i>The Berne Convention for the Protection of Literary and Artistic Works</i> (London: Kluwer & QMW, 1987)
RIDA	<i>Revue Internationale Du Droit D'Auteur</i>
RPC	<i>Reports of Patent, Design and Trade Mark Cases</i>
RSC	Revised Statutes of Canada
Russ	<i>Russell's Chancery Reports</i>
SCC	Supreme Court of Canada
SCE	Standing Committee E
Sherman and Bently	B. Sherman and L. Bently, <i>The Making of Modern Intellectual Property</i> (Cambridge: Cambridge University Press, 1999)
<i>Shorter OED</i>	<i>The New Shorter Oxford English Dictionary</i> (Oxford: Clarendon, 1993)
SI	Statutory Instrument
SR (NSW)	<i>New South Wales State Reports</i>
Sterling	A. Sterling, <i>World Copyright Law</i> , 2nd edn (London: Sweet & Maxwell, 2003)
Swanst	<i>Swanston's Chancery Reports</i>
Tax Cas	<i>Tax Cases</i>
Term Directive	Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights 1994
TS	Treasury Solicitor
US	<i>United States Supreme Court Reports</i>
USC	United States Code
Ves	<i>Vesey Junior's Chancery Reports</i>
WIPO	World Intellectual Property Organization
WIPR	<i>World Intellectual Property Reports</i>
WLR	<i>Weekly Law Reports</i>
WN	<i>Weekly Notes of Cases</i>

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