Copyright Future
Copyright Freedom

Edited by Brian Fitzgerald and Benedict Atkinson

COPYRIGHT FUTURE COPYRIGHT FREEDOM

Marking the 40th Anniversary of the Commencement of Australia's *Copyright Act 1968*

Edited by Brian Fitzgerald and Benedict Atkinson

Queensland University of Technology

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PREFACE

Professor Brian Fitzgerald

This book arises from a conference that I convened along with Benedict Atkinson at Old Parliament House in Canberra.

The conference was held near to the day of the 40th anniversary of the commencement of the Australian Copyright Act of 1968.[1]

Ben Atkinson's work – The True History of Copyright – had encouraged me to assemble key figures in Australian copyright history at Old Parliament House to discuss the past, present and future of copyright law.

I am thankful to the presenters for their generosity and insights and to the enthusiastic participants for making the conference a lively forum of discussion.

I am also thankful to the Australian Research Council (ARC) Centre of Excellence for Creative Industries and Innovation (CCi) and QUT (my home institutions) for supporting the conference and the many people who helped make the conference a success including Ben Atkinson, Tanya Butkovsky, Anne Fitzgerald, Steven Gething, Rami Olwan, Elliott Bledsoe, Kylie Pappalardo, Xiao-Xiang Shi and Nic Suzor.

A special thank you to Ruth Bell of the Ngunnawal people for her Welcome to Country.

While I had high hopes that this would be an interesting event I had not anticipated the excitement that the conference would generate.

The essays we have collected in this volume are only a selection of what was on offer.

We trust that you will enjoy them.

Professor Brian Fitzgerald

Brisbane

October 2010

[1] The Act commenced on 1 May 1969.

FOREWORD

The Hon Michael Kirby AC CMG[1]

COPYRIGHT WILL CONTINUE

Towards the end of this book, in his second contribution on national, regional and international perspectives of copyright, Professor Adrian Sterling shares with the reader an anecdote from his long career in the world of copyright law.[2]

He describes the conclusion of the conference of the World Intellectual Property Organisation (WIPO) in 1996, at which the WIPO treaties on copyright and related rights were approved. According to his recollection, the Director of WIPO at the time, Dr Arpad Bogsch, greeted him in what was to be their last meeting. Dr Bogsch declared: "Sterling, these treaties are only a step in the history of copyright. You and I will disappear, but copyright will continue". Affirming that "Dr Bogsch was always right", Adrian Sterling draws comfort and encouragement from this prediction.

Partly in consequence of the exponential growth of technology in recent years (and especially the development of the internet), the challenges to copyright law, as it has evolved, are daunting. Traditionalists, even of the most devoted kind, must sometimes wonder how the fabric that they have built, and loved, can remain intact under the multiple assaults launched against it. Criticisms have been conceived in ideology, nurtured in politics and self-interest and delivered by a never-ending stream of technological changes. So it has been in the past thirty years. So it will probably be in the decades ahead.

Just to show that miracles can still happen to retired judges, when I departed Barwick's High Court building, I had no computer on my desk. Not far from the building could be seen the art deco elegance of Old Parliament House, Canberra. That was where the conference was held whose papers are collected in this book. Not long before I attended the conference, I could not open a computer, still less send an email or conduct a Google search. Well, necessity is not only the essential ingredient for an

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[1] Justice of the High Court of Australia (1996–2009). One time chairman of the Australian Law Reform Commission (1975–84); Judge of the Federal Court of Australia (1983–4); Laureate of the UNESCO Prize for Human Rights Education (1998).

[2] A. Sterling, "Current Issues: National, Regional and International Perspectives", this volume, p200.

implication that a statutory licence will be implied as a matter of law under the *Copyright Act* 1968 (Cth) s183 into a contract between a creator and its clients in favour of a State[3], it is also the mother of a retiree's inventiveness. So now, like more than a billion others of my species, I lock my mind every day into the internet. It trawls and searches through cyberspace, opening up original works of countless others, available for the most part free online.

THE DYNAMIC OF TECHNOLOGICAL CHANGE

My newfound capacity with the internet has brought me into acquaintance with all the fashionable outlets, even YouTube. A video doing the rounds on this network reveals, amongst other things[4]:

> If you were one in a million in China, there would be 1300 people just like you.
>
> China will soon be the number one English-speaking nation on earth.
>
> The top ten in-demand jobs in 2010 did not even exist in 2004.
>
> One in eight couples in the United States who married in 2010 met on line.
>
> Every month in 2010, 31 billion searches were conducted using Google. In 2006, the figure was 2.7 billion.
>
> The number of years that it took to reach a market of 50 million was: in the case of radio, 38 years; of television, 13 years; of the internet, 4 years; the iPod, 3 years; Facebook, 2 years.
>
> 200 million users of Myspace, if they were a nation, would be fifth largest in the world, ranked between Indonesia and Brazil.
>
> The number of internet devices in 1984 was 1000. In 1992, a million. In 2008, 1000 million.
>
> The amount of new technological information is doubling every two years. For students taking a four year technical degree, this means that half of what they have learned in their first year of study will be outdated by their third year of study.
>
> By 2013, a super computer will be built that exceeds the computational capacities of the human brain. Predictions are that by 2049, a $1,000

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[3] *Copyright Agency Limited v State of New South Wales* [2008] HCA 35; (2008) 233 CLR 279 at 305–6 [92]-[93], citing *Concrete Pty Ltd v Parramatta Design & Developments Pty Ltd* [2006] HCA 55; (2006) 229 CLR 577 at 584 [13]-[14] per Gummow ACJ; and at 606 [96], per Kirby and Crennan JJ.

[4] www.youtube.com/watch?v=cL9Wu2kWwSY.

> computer will exceed the computational capacity of the entire human species.
>
> During the course of this presentation, 67 babies were born in the US; 274 in China; 395 in India and 694,000 songs were downloaded illegally.

From the point of view of experts in the law of copyright, the sting in the tail of this YouTube presentation (which lasted all of four minutes) was to be found in the concluding statistic. All of those worthy individuals and citizens, many of them children (some maybe even judges), are knowingly, ignorantly or indifferently finding themselves in breach of international and national copyright law. And they intend to keep on doing exactly as before.

THE LEGAL AND THE ILLEGAL

The fact that this is so and is of such little concern to so many, profoundly interests Professor Laurence Lessig, whose keynote address is featured in this book.[5] Young people, especially, view remixes, for example, as a type of conversation. Just as in earlier days, young people sang the songs of the day, or old songs together. As Professor Lessig describes it:

> Instead of gathering in the corner, or on the back lawn, people from around the world are using this digital platform to engage in a form of read-write technology.

Some activities of the new generations are unregulated by law. But some are definitely contrary to law. Just as in earlier generations, buying tea at Boston Harbour, upon which royal tax had not been paid, was contrary to law. Or just as adult private homosexual activity was (as it still is in many places) contrary to law. Or providing sterile injecting equipment to minimise the spread of HIV/AIDS was (and often still is) contrary to law. Law is not everything. But lawyers tend to consider that it is rather important that it should be obeyed and respected. Otherwise, if it is ignored or defied, that fact might bring down the whole edifice of the rule of law.

In the same chapter, Adrian Sterling quotes the recent report *Digital Britain* as making this point:[6]

> In the new digital world, the ability to share content legally becomes ever more important and necessary … There is a clear and unambiguous distinction between the legal and illegal sharing of content which we must

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[5] L. Lessig, "Culture Wars: Getting to Peace, this volume, p116.

[6] Sterling, n2 above at p221 citing BERR, Interim Report, *Digital Britain*, (January 2009, The Stationery Office), par.[3.2].

> urgently address. But we need to do so in a way that recognises that, when there is very widespread behaviour and social acceptability of such behaviour that is at odds with the rules, then the rules, the business models that the rules have underpinned and the behaviour itself, may all need to change … Our aim, in the rapidly changing digital world is a framework that is effective and enforceable, both nationally and across borders. But it must be one which also allows for innovation in platforms, devices and applications …

How can international and national copyright law be changed to conform not just with the technology that is with us now, but with the amazing pace of technological expansion that is happening so fast that we cannot even imagine where we will be in a couple of decades? The slow-moving pace of legislative change, bureaucratic decisions and judicial opinion-writing makes it difficult, if not impossible, to cope with the current pace of technological innovation in informatics. And if this is true of municipal law, how much more true in the case of international law, where the economic, social, cultural and other diversities are such that consensus (with all its subtle nuances) can only be achieved through intensely time-consuming negotiations, trade-offs against competing interests and overcoming hurdles presented by countless obstacles?

THE WARM EMBRACE OF SOFT LAW

In my early days as chairman of the Australian Law Reform Commission, I was introduced to the challenges of the impact of technology on the law in several of the projects of the Commission. They included the reports on human tissue transplantation[7] and privacy.[8] Thus, scientific developments suddenly helped to overcome the previous human immune rejection of transplants. And just as the Commission was about to deliver its report on transplantation law, a baby, Louise Brown, was born as a result of *in vitro* fertilisation. The use of foetal tissue already then loomed as a new challenge for gaining a local consensus over the shape that Australian law should take. Prudently, perhaps, the Commission elected to leave these issues aside, for separate attention. Safer by far to limit our recommendations to the transplantation of corneas and kidneys. A foetus seemed to raise different and more controversial questions.

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[7] Australian Law Reform Commission, *Human Tissue Transplants*, (ALRC 7, 1977).

[8] Australian Law Reform Commission, *Privacy* (ALRC 22, 1983), 206.

In the privacy report, the Commission recommended (and the Australian Parliament accepted[9]) certain 'information privacy principles' to guide decisions on the protection of privacy in the then new world of computer processing. These principles were, in turn, derived from a report of the Expert Group on Privacy of the Organisation for Economic Co-Operation and Development (OECD) which I had chaired in Paris 1978–80.[10]

There was wisdom at that time in proceeding along the path earlier charted by "soft law", in the form of the OECD Guidelines. This is a point that has been made in the context of copyright law by Professors Bernt Hugenholtz and Ruth Okediji, when conceiving a future international instrument on limitations and exceptions to copyright.[11] Still, the dangers of soft law, when translated into the hard law of national statutory texts, was quickly demonstrated to the Australian Law Reform Commission by supervening advances in information technology. Suitable to the technology as it stood when the OECD report was completed (and endorsed by the Council of that organisation in 1980) was the 'use limitation principle'. For protection of individual privacy, this principle limited the later use of [private] personal information to a use for which the information had earlier been [lawfully] collected or any other use to which the data subject had given consent or specific approval was granted by law. But with the advent of search engines, such as Google, that principle, at least in the terms originally expressed, became unsuitable, if not unworkable and probably unthinkable. So enormous were the utilities of the search engines that no-one could hope to turn back the clock.

Although this meant the active use of information with personal identifiers for purposes other than those first given (necessarily some of it out-of-date and gathered for quite different and even alien purposes) the marginal utility of the facility of the search engine was far greater than the marginal cost in the loss of privacy or in any (futile) attempt to restore the old legal regime so as to apply to the new informatics.

In this sense, therefore, the problem now faced by intellectual property lawyers in general (and copyright lawyers in particular), because of the advance of technology and the huge public engagement with it, is nothing new. What is new, as the report *Digital Britain* explains, is the "very widespread behaviour and social acceptability"

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[9] Organisation for Economic Co-operation and Development *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, OECD, Paris, 1981.

[10] See M.D. Kirby, "The History, Achievement and Future of the 1980 OECD Guidelines on Privacy" (2010) 20 *Journal of Law, Information and Science* 1.

[11] P.B. Hugenholtz and R.L. Okediji, *Conceiving an International Instrument on Limitations and Exceptions to Copyright* (Final Report), March 06, 2008, Uni of Amsterdam and Uni of Minnesota, 5.

that comes in the train of the new technology and effectively demands the acceptance of a new legal paradigm.

COPYRIGHT AND THE PUBLIC INTEREST

What should that paradigm be? This is a question that recurs throughout the contributions collected in this book. Professors Hugenholtz and Okediji have pointed out that, certainly in our legal tradition of the common law"[12]

> It is a well-established principle of copyright doctrine that the qualified grant of proprietary rights over the fruits of creative enterprise is directed first and foremost at the promotion of the public interest. Most countries around the world explicitly recognise this vital goal as a foundational element of their copyright systems.[13] Indeed, from the very first formal copyright law, the British *Statute of Anne* (1710), the encouragement of learning and dissemination and knowledge as a means to enhance the general welfare has been the chief objective behind the grant of exclusive rights to authors[14]. For over 100 years, this public-centred rationale of copyright protection has been recognised and clearly articulated in all major instruments for the global regulation of copyright[15]. The currently pre-eminent Global Intellectual Property (IP) Treaty, the Agreement on Trade-Related Intellectual Property Rights[16] (TRIPS) Agreement, concluded under the auspices of the World Trade Organisation (WTO) in 1994, recently reflected and re-affirmed this basic precept by describing the overarching objective of intellectual property protection under the Agreement as "the mutual advantage of producers and users of technological knowledge … conducive to social and economic welfare"[17]

Yet, it is one thing to express, in general language, a commitment to "public interest", "learning and dissemination of knowledge" and "mutual advantage". It is often quite

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[12] Ibid, 6.

[13] See e.g. US *Constitution*, Art.1, sec8, cl8. 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*, OJ No.L167 at 10 (2001), pmbl 3.

[14] See *Statute of Anne*, 8Anne c19 (1710), pmbl and art.[2] 1.

[15] See *Berne Convention on the Protection of Literary and Artistic Works*, September 9, 1886 as last revised, July 24, 1976; 828 UNTS 221; *Universal Copyright Convention (WIPO) Copyright Treaty*, December 20, 1996.

[16] TRIPS Agreement, April 15, 1994, Marrakesh Agreement establishing the World Trade Organisation, Annex.1C; 33 ILM 81 (1994).

[17] TRIPS Agreement, n15, art.7. See also id. Art 8.1.

another to translate these aspirational phrases into activities that are accepted by the several competing interests that are at stake. The competition of interests will include such practical concerns as respective economic advantages. They will offer perceptions of what is right, derived from legal history and doctrine that can differ quite markedly between nations. They will sometimes include a particular element offered by competing assertions of the requirements of international human rights law. Because this is an area of law with which I have had some involvement over three decades, I must refer to it in this context.

THE NEW PARADIGM OF HUMAN RIGHTS

The language of international human rights is not antagonistic to intellectual property protection. Providing legal protections for intellectual property (including patents of invention, trademarks and copyright) is by no means alien to the objectives of universal human rights. To the contrary, from the very start of the attempts in the post-Second World War era, to express and uphold universal human rights, a place has always existed for the defence of those interests that are conventionally safe-guarded by intellectual property law.

Thus, in the *Universal Declaration of Human Rights*[18] (UDHR), prepared in 1947–8 by a committee chaired by Eleanor Roosevelt of the United States of America (and brought into operation in the General Assembly of the United Nations by a vote over which an Australian, Dr. H.V. Evatt, presided), the following article was included:

> *Article 27*
>
> 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
>
> 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The potential juxtaposition of, and tension between, the foregoing paragraphs was immediately noted. When the UDHR was transformed into a treaty, relevantly the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)[19], the states parties to the treaty committed themselves to "achieving progressively the full

[18] *Universal Declaration of Human Rights*, United Nations, GA Resolution 217A(iii), 1948.

[19] 993 UNTS 1453 (1976).

realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".[20]

Amongst the rights recorded in the ICESCR were:

> *Article 15*
>
> 1. The States Parties to the present covenant recognise the right of everyone:
>
> (a) To take part in cultural life;
>
> (b) To enjoy the benefits of scientific progress and its applications;
>
> (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
>
> 2. The steps to be taken by the States Parties to the present covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
>
> 3. The States Parties to the present covenant undertake to respect the freedom indispensible for scientific research and creative activity.
>
> 4. The States Parties to the present covenant recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Again, within the very same article, principles are stated that appear to pull in differing, and even opposite, directions, so far as the award of exclusive rights to creative authors is concerned. However, it is not always appreciated that international human rights law includes provisions expressly recognising and accepting the fundamental, universal and morally justifiable character of the nominated intellectual property rights.

Of course, in the attainment of those rights, it is necessary to secure a reconciliation of each such right with the other rights provided elsewhere by international human rights law, according to their terms. Thus, the rights of some persons must be reconciled with those of others. The rights afforded by some articles of the human rights treaties must be reconciled with the rights of others under other treaties. Notably, in apparent competition with a provision such as that in Article 15 of the ICESCR are the following rights contained in the *International Covenant on Civil and Political Rights* (ICCPR)[21]:

> *Article 19*

---

[20] ICESCR, Art2.1

[21] 999 UNTS 171 (1976), 16 December 1966 (emphasis added).

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, *receive* and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through *any other media of his choice*.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

Many of the contemporary debates about the shape and direction of international and national copyright law involve an endeavour to reconcile the foregoing rights. I am sure that some intellectual property lawyers, particularly those of a parochial kind who have never ventured outside their intellectual specialty, will have little sympathy for my mention of this backdrop of international human rights law. However, it is reassuring to see the attention given to the subject in this book by, amongst others, Adrian Sterling.[22] Correctly, he invokes international human rights law to rebuff the more extreme assertions of IP-phobic commentators, calling for the abolition of IP protection altogether, or, at least, modification in relation to material freely available on the internet.[23]

Just as reminders of the aspirational core value of "public interest" in copyright law can sometimes give little practical guidance to municipal lawyers or lawmakers, so appeals to the broad language of the UDHR or the ICESCR may sometimes send different signals to different minds, according to their susceptibility, backgrounds and interests.

An important point has been made in this connection by Professors Graeme Austin and Amy Zavidow[24] in an article on "Copyright Law Reform Through a Human Rights Lens".[25] Whilst accepting that international human rights law will not necessarily resolve the tensions between proponents and critics of copyright law, the authors suggest, for the purpose of reform (in my view correctly), that international law

[22] Cf. Sterling, n2 above p200.

[23] Ibid, p227.

[24] Both of the University of Arizona, James E. Rogers College of Law.

[25] "Intellectual Property and Human Rights", 2008, *Arizona Legal Studies*, Discussion Paper No.0734.

affords unexplored territory, potentially useful for defenders of global copyright regimes. Moreover, Austin and Zavidow assert that:

> Debates about the domestic law reform agenda in the copyright field could be richer and more salient if they were accompanied by deeper engagement with public international law – both the public international law of intellectual property and international human rights law.

This is an appeal that I would endorse. Unfortunately, it sometimes needs endorsement in countries, such as Australia and the United States, which tend to be rather parochial and even a tad self-satisfied about their law in general, and their intellectual property law in particular.

DESTABILISING PREVIOUS BALANCES

A special difficulty that is peculiar to the need, which international human rights law recognises, to reconcile competing human rights norms, is the fact that, in many countries, particularly in the developing world, there are inadequate provisions either in constitutional law or the domestic legal tradition and practice, to speak up for the right of access to information when it comes into conflict with intellectual property rights asserted by powerful commercial interests. This is a point which has been made by Professor Michael Birnhack in his article "Global Copyright, Local Speech"[26]. Birnhack argues that, whatever its original history, copyright law today is less a means of promoting progress in science (as the words of the United States Constitution proclaim) so much as protecting established national interests in the matter of trade. The TRIPS Agreement of the WTO has effectively produced a global copyright regime which, Birnhack concludes, has "de-stabilised previous balances". He argues that the shift to a global trade environment requires an urgent re-evaluation of the previous balances, particularly because, in the face of expanding trade-related copyright, the competing norms of international human rights law (access to information, research and free speech) tend to be "left unattended".

Professor Birnhack argues that this result is especially true in developing countries, mostly with neither express nor effective constitutional provisions to uphold free speech and usually with inadequate political will to do so. In short, Birnhack's special concern is about the effective imposition of copyright obligations, through TRIPS and bilateral free trade agreements, whereby, as he puts it, as "the trade benefits to The North have a cost in limiting access to information, use thereof and formation of new speech, or more generally, it has a cost in freedom, in The South".

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[26] 24 *Cardozo Arts and Entertainment Law Journal* 491 (2006).

Not all writers in this field are as pessimistic as Professor Birnhack. Professors L.R. Helfer and G.W. Austin, in an excellent review: "Human Rights and Intellectual Property: Mapping the Global Interface",[27] conclude that the intersection of human rights and intellectual property law is now "unavoidable".[28] They classify the responses of lawyers in the field into four groups:

- The first are those human rights lawyers who declare that, basically, IP law does not fit into the new world of human rights. By reference to the history and the texts of the UDHR and ICESCR, it is suggested that such opponents "understand the discourse of one complex legal and political system but not the other".[29]
- Secondly, they identify the IP protagonists who are deeply fearful of, and therefore hostile towards, international human rights law; proclaiming that it will "promote government intervention in private innovation markets and … radically scale back or even abolish IP protection".[30] They point out that this is simply not likely to happen in the real world.
- The third category includes those lawyers from both camps who worry that the international legal system is being overly fragmented, so that it is difficult to acknowledge the competing values of human rights and IP. The authors accept that there is a specific problem of whether the current decision-makers within WTO, for example, "are adequately equipped" to mediate the conflicting values of international IP treaties and of human rights law[31].
- Finally, they themselves suggest a fourth approach, which they urge should be "empirically grounded".[32] That is, it should recognise that both human rights and IP legal regimes are continually evolving in response to changing conceptions of fundamental legal entitlements and technological progress. They point out that no empirical approach to that reconciliation of international law which will best protect the legitimate interests of all players will occur, without improvement in the process, transparency and predictability of the current techniques.[33]

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[27] *Arizona Legal Studies*, DP No.10–18 (University of Arizona, May 2010).

[28] Ibid, 10.

[29] Ibid, 11.

[30] Ibid, 11.

[31] Ibid, 12.

[32] Ibid, 16.

[33] For an example of a practical way in which the broad principles of fundamental rights may be used in choosing the preferable construction of municipal copyright legislation and thus securing a reconciliation see e.g. *Metro Goldwyn-Mayer Studios Inc v Grokster Ltd* 75 545 US 913 (2005) per

In this connection, Professors Helfer and Austin make what seems to me to be a powerful point:

> A salient recent example is the Anti-Counterfeiting Trade Agreement (ACTA), a proposed multi-lateral treaty that would establish new and more robust obligations for states to suppress unauthorised uses of intellectual property. For two years, ACTA negotiations occurred in secret and governments refused to disclose an official draft text of the treaty. Only after a French civil rights NGO leaked the document revealing "contradictions between the text and public comments by [government] negotiators" did governments release an official text. This lack of transparency involving potentially far-reaching changes to domestic and international intellectual property laws and enforcement mechanisms is disturbing, as is the inability of interested constituencies to, in the words of the Committee on Economic Social and Cultural Rights, "take part in … any significant decision-making processes that have an impact on their rights and legitimate interests.[34]

Whilst secrecy on the part of powerful national interests (doubtless egged on by the sometimes even more powerful interests of transnational corporations) may be understandable, it is intolerable as a matter of global policy and principle. It may itself be a breach of international human rights norms. Little wonder that many observers of international copyright law, and of its current directions and indecisions, are suspicious and antagonistic. Nevertheless, Professors Helfer and Austin, make very useful suggestions. It is essential to know exactly how in practice the current international regimes operate. There is no doubt that intellectual property protections are still useful and justifiable in principle. Moreover, in the international context, they have the support of express provisions in international human rights law itself.

At the end of their analysis, Professors Helfer and Austin conclude in words that I would endorse:[35]

> [T]here may be no incompatibility if individuals retain the right to be acknowledged as creators and to receive remuneration for at least some

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Breyer J (with whom Stevens and O'Connor JJ joined) and *Stevens v Kabushiki Kaisha Sony Corp* [2005] HCA 58; (2005) 224 CLR 193 at 255–258 [213]-[221] per Kirby J.

[34] United Nations, Committee on Economic, Social and Cultural Rights, General Comment No.17, *The Right of Everyone to Benefit from the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Product of which he is the Author*, Art.15(1)(c). UN Doc.E/C/12/2005, par.[34] (November 21, 2005).

[35] Helfer, Laurence, and Austin, Graeme, *Human Rights and Intellectual Property: Mapping the Global Interface*. New York: Cambridge University Press, 2011, p 522.

> uses. The more fundamental point, however, is that although creators and innovators do indeed possess a narrow class of inalienable economic and personality rights, they can choose how best to exercise those rights so as to construct a zone of personal autonomy that is both self-empowering and conducive to the broader public values that the human rights framework for IP seeks to achieve.

Those broader frameworks will include creative commons, incentives designed to reduce poverty, disease, misgovernment and other afflictions as well as limitations and exceptions to copyright protection, yet to be worked out.

The working out is, of course, a major enterprise. It will not happen overnight. Indeed, it will not happen any time soon. But a step in the right direction is to collect the informed experts. To encourage amongst them a constructive clash of opinions. To lift the thinking of all so as to take them outside their comfort zones, shaped by current international and municipal law and perceptions of past practice and present national interests. And to stimulate bold and inventive thinking.

THE URGENCY OF LAW REFORM

This was the objective of the conference convened at Old Parliament House, Canberra on the 40th anniversary of Australia's *Copyright Act* of 1968. It is what makes this book, collecting those proceedings, so interesting, topical and valuable. It is all here. Anecdotes. Analysis. History. Optimism. Pessimism. Ways forward. Scepticism. Hostility. Infatuation. Fierce reformism. And passionate defence of the status quo. The editors and organisers deserve praise. But, the greatest reward for the contributors will be if this book helps to stimulate consideration of law reform, both at an international and national level.

Michael Kirby

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