BOOK REVIEW

The Object of Copyright: A Conceptual History of Originals and Copies in Literature, Art and Design
Stina Teilmann-Lock

The Object of Copyright, Teilmann-Lock indicates at the very start, is intended as a contribution to existing '*histories* of copyright'[1] (p. 3), acknowledging that copyright law has developed 'in a manner at once transnational and eclectic' (p. 5). It offers a conceptual history of the objects of copyright protection and – in what is a particular strength of the book – does so by focusing on France, Britain and Denmark. While readers may be familiar with elements of British and French copyright history that is less likely to be the case with Danish history and the inclusion of this perspective is welcome. In tracking the messy evolution of the 'object' of copyright Teilmann-Lock shows the variety of shifts in copyright law from 'printing paradigm copyright' (p. 8), to 'the conceptual pair of the original and the copy' (p. 9). The book itself, as the author acknowledges, is also a testament to the richness of the Primary Sources of Copyright database[2] which is proving to be indispensable to the writing copyright histories and continues to amass fascinating new material, most recently on Jewish copyright law.

Chapter 1 of the book begins with a discussion of the Statute of Anne noting that the imprecision with which the statute dealt with the notion of the 'copy' arises also in the equivalent Danish act (the Danish Ordinance of 1741) (p. 18). It is interesting that, amongst other things, the act penalised those authors and publishers whose works remained out of print for a one year period (p. 20) to the extent that others would now be able to freely print those works. In an era of copyright maximalism – an extensive array of exclusive rights for the life of the author plus 70 years – this provides an intriguing glimpse into an alternative copyright.

The focus on printing – referred to as the 'printing-reprinting formula' (p. 27) or paradigm – evident in Britain, Denmark and France in the eighteenth century is discussed in chapter 2. The author observes that the origin of 'copying' was, simply, re-printing as befitted the technologies of the time. The famous cases, familiar to copyright lawyers, *Millar v Taylor*[3] and *Donaldson v Beckett*[4] are notwithstanding their elucidation of the 'complex legal and philosophical questions of the literary property debates… also typical examples of the 'printing-reprinting formula' of the Statute of Anne' (pp. 28-9). The chapter moves then to discuss a number of cases in different jurisdictions to illustrate the point and includes a telling aside from Danish history that demonstrates the *irrelevance* of copyright. When an orphanage producing its own hymn books wished to prevent their re-printing, rather than appealing to copyright law went in 1778 to King Christian VII to successfully seek a royal privilege to prevent this (p. 32). A reader might

[1] Such histories include R Deazley, *On the Origin of the Right to Copy* (Hart, 2004) and B Sherman and L Bently, *The Making of Modern Intellectual Property Law* (Cambridge University Press, 2008)
[2] Primary Sources on Copyright (1450-1900), eds L Bently & M Kretschmer, www.copyrighthistory.org
[3] (1769) 4 Burr 2303
[4] (1774) 2 Bro PC 129

well reflect upon the special rights granted in section 301 of the Copyright Designs and Patents Act 1988 (CDPA) to Great Ormond Street Hospital, over the performance royalties and 'commercial publication or communication to the public' of J.M. Barrie's (out-of-copyright) *Peter Pan*, which may be viewed less as a quirk of copyright law in restricting copying and more like an unsettling echo of appeals to the Crown to prevent printing of works by rivals.[5]

Teilmann-Locke leads us through a number of cases from different jurisdictions relating to both literary and, as the law developed, artistic works – and indeed providing a lucid discussion of the multifarious statutes governing artistic copyright in the eighteenth century – in showing that it was the 'expansion' of copyright's scope away from mere re-printing that copyright 'began to fulfil its potential as a regulator of cultural life' (p. 35). For example, in France, the protection of certain literary, musical and artistic works within that country's 1793 Copyright Act although on the face of it simply providing a sale and distribution right for authors in fact, over the course of the nineteenth century came to cover the much broader right of reproduction (p. 39). Nevertheless the printing-reprinting paradigm was slow to disappear. One of the examples provided is of the French case *Robin v Romagnesi*[6] in which the production of a cast was conceptualised as a form of printing and reprinting. Indeed it is the engaging, and seemingly effortless movement between jurisdictions and the particulars of such cases, that gives the clear impression that the adoption of copying as copyright's animating concern arose from a concern with perfecting the operation of the printing-reprinting paradigm: the outcome was perhaps unintended but nevertheless a logical one.

The short subsequent chapters broaden out the discussion of reprinting to consider the lack of protection for art via a discussion of Kant and Benjamin and so neatly sets up the context for chapters 4 and 5 on artistic copyright in France and Britain respectively, the latter with a focus on the evolution of the Fine Art Copyright Act 1862. The author highlights Kant's elucidation of the difference between literature and art showing that it is precisely assumptions about the materiality of art – a work of art has an 'original' from which copies are derived in a way that literature does not – that would come to define the 'object of copyright' (p. 50) and therefore the movement away from the law's paradigm of printing-reprinting. We can continue to see the tensions within this initial distinction continue to manifest themselves in UK copyright law for example where the expectation that an artistic work will be *material* has wended its way into the copyright case law despite the absence of fixation as a requirement for the subsistence of copyright in an artistic work.[7] The author is clear that the book is not concerned with moral rights (p. 1) but the book nevertheless provides a good accompaniment for anyone wishing to understand the context in which moral rights protection arose. The argument also

[5] For a discussion of the 'copyright privilege' in Parliamentary debates at the time see C Seville, 'Peter Pan's Rights: "To Die will be an Awfully Big Adventure"' (2003) 51 Journal of the Copyright Society of the USA 1, 5

[6] Cour de Cassation, du 17 novembre 1814

[7] In section 4 Copyright Designs and Patents Act 1988. A Barron, 'Copyright Law and the Claims of Art' (2002) Intellectual Property Quarterly 4: 368–401, 383.

interlocks with Teilmann-Lock's work elsewhere on the moral right of integrity and the importance of the unique original work of art.[8]

The chapters on French and British artistic copyright offer contrasting historical narratives and are especially useful in highlighting the French counterparts to Blaine's *Report of the Artistic Copyright Committee to the Council* in 1858 (p. 87). As in France, the relevant committee on artistic copyright found plenty that needed to be changed (pp. 88-9). Of particular relevance was a French parliamentary commission of 1825-6 on the reform of copyright law. The chair of the committee Alphonse de Lamartine presented it by saying: 'all property, has three objectives in view: remunerating work, perpetuating the family, increasing public wealth' (p. 59). His contemporary, Augustin-Charles Renaoud disagreed stating that author's rights were simply a just reward, or 'juste prix' (p.59-60). It was the latter, the author argues, whose views were recognisably 'modern' (p. 63). Although the issue of reproduction was not elucidated during the relevant parliamentary debates, Renaoud viewed it as separate from the material instantiation of a work (p. 54) and, for instance, a concern with the 'reproduction' of artistic works from one medium to another (p. 79).[9] This was in marked contrast to Blaine's position; he argued that changes in medium would in fact harm sculptors regardless of a different medium being employed (pp. 87-8).

The nineteenth century saw a number of copyright bills in France and, despite the lack of success in their enactment, their attempted passage changed the development of French copyright law doctrine (p. 66). Teilmann-Lock provides a convincing account of the way in which it was a 'destabilization of terminology' rather than statute that created the shift to the modern conceptualisation of copyright through a number of key cases (pp. 67-76): "contrefaçon' (infringement) materialized in negotiations over the meaning of such concepts as 'l'ouvrage', 'l'œuvre' and 'reproduction" (p. 66). Indeed the latter two concepts were a gift to future copyright scholars arising from the debates of this time (p. 83). Specifically, the word 'reproduction' from the 1820s onwards in France would come to be the term for 'copyright infringement as well as for the infringing object' (p. 109). In comparison, the debates over artistic copyright gave rise, in Britain, to the Fine Arts Copyright Act 1862. Again, it was concerns over the protection of art specifically – referring to originals and copies of works – that came to define the ambit of copyright's key concepts more generally (pp. 91-3; 98). As Teilmann-Lock points out (p. 99), these concerns find their echo in the well-known statement in *University of London Press Ltd v University Tutorial Press Ltd*[10] that 'a work must not be copied from another work – that it should originate from the author'. Surprisingly perhaps, the term 'reproduction' only wended its way fully into UK copyright law in the Copyright Act 1911 (p. 110).

[8] S Teilmann, 'Framing the Law: The Right of Integrity in Britain' (2005) 27(1) European Intellectual Property Review 19, 23.

[9] Albeit not in the way contemporary copyright scholars might expect – same medium copyright was seen as problematic while copying a two dimensional work in three dimensions was not such as drawing to sculpture (p. 79).

[10] [1916] 2 Ch 601, 608

A useful analysis drawing on French and British cases is then undertaken in chapter 6. The discussion on the meaning of the language of copyright is illuminating:

> [T]he term 'copy' entered copyright law with the specific sense it had acquired in printing. […] 'Reproduction' – which is not a Latin word – can be traced back no earlier than the seventeenth century, In French – as in English – it designated the process by which 'something renews itself'[11] […] *Le Robert* dates the first instance of 'reproduction' in the sense of 'multiplication,' as in copyright law, to 1839'. (p.117)

An interesting link is made by the author to current French law in that the French Intellectual Property Code has subsumed the historical 'droit de reproduction' within the broader 'droit d'exploitation' but, crucially, the relevant article 122-3 that defines 'reproduction' does not provide an exhaustive list of technologies for how it might be effected (pp. 109-10). The fraught issue of copyright in photographs (pp. 103-5) is also of particular interest here in continuing to complicate the meaning of the terms 'original' and 'copy'. These cases too continue to find their contemporary echoes in debates on more recent developments in the area of copyright in photographs – and what originality means in the context of photographs of paintings – following the US case *Bridgeman Art Library Ltd v. Corel Corp.*[12]

The final chapter departs from the study of French and British law to consider the history of the law of design in Denmark. This is a welcome addition to the work as a whole in presenting a fresh perspective on the difficult distinctions to be made between fine and applied arts. As the recent repeal of section 52 CDPA in the UK shows, the fine line between art and design continues to be a source of legal tension.[13]

In producing a historical account across jurisdictions, Teilmann-Lock deftly charts the shift away from the printing/reprinting paradigm towards the 'original' and 'copy' as objects of copyright law making *The Object of Copyright* of interest to legal historians and intellectual property scholars alike.

Marta Iljadica

---

[11] *Le Robert* (1690) dictionary

[12] 36 F. Supp. 2d 191 (S.D.N.Y.) 1999. See K Garnett, 'Copyright in Photographs' (2000) 22(5) European Intellectual Property Review 229; R Deazley, 'Photographing Paintings in the Public Domain: A Response to Garnett' (2001) 23 European Intellectual Property Review 179

[13] See generally L Bently, 'The Return of Industrial Copyright?' (2012) 34(10) European Intellectual Property Review 654