

# Introduction: Albion's legacy?

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The only reason for going back into the past is to come forward to the present, to help us to see more clearly the shape of the law today by seeing how it took shape. (*Victoria v Commonwealth* (1962) 107 CLR 529, at 595 per Windeyer J.)

This volume embarks on a global journey, starting from Britain and visiting many other shores. It specifically surveys the impact and evolution of the British Imperial Copyright Act 1911 within such countries that were part of the British Empire. It offers a bird's eye perspective of why and how the first global copyright law launched a new order, which is often termed as the 'common law copyright system'. The collection of essays in this volume draws upon some of the best scholarship from Canada, Australia, Singapore, Jamaica, Israel, India, South Africa and New Zealand. The authors, academics and practitioners alike, situate the Imperial Copyright Act 1911 within national laws, both historically and legally. The aim of the chapters is to query the extent to which the ethos and legacy of the 1911 Copyright Act remains within indigenous laws.

There is a lingering view that, with the advent of decolonization from the 1940s onwards, British imperial law has been totally eradicated within national systems. This is basically true, and begs the question: is there any point in revisiting the past and tracing the genesis and transplantation of the 1911 Copyright Act? It stands to reason that the copyright landscape in most nation states starts from a point in space and time that is disconnected from the genesis of the nation itself. This is partly due to the fact that the concept of copyright itself has followed a meandering journey, incorporating new bases and diversifying into several legal families. It is easy to fall into the school of thought that tends to view the national laws of ex-colonies as quixotic, indigenous versions of yesterday's empires.

And yet, the editors of this book would argue that the legal reality is perhaps more nuanced and complex, and deserves exploration. Each

nation has its own distinct legal rubric, which cannot be interpreted as being a distilled and localised version of the copyright laws imposed on them during the nineteenth and twentieth centuries.

A more rational approach is to accept that most countries have undertaken their copyright journeys based on three legally contextualized maps. First, national laws began, and were subsequently and continuously revised to correspond with the shifting international norms. The evolution of all legal systems is slow, and this particular journey had its initial stirrings in Venice around 1470. It was subsequently influenced by the colourful and chaotic era of printing privileges throughout Europe, until the 'modern' Statute of Anne 1710 took copyright's journey into a different legislative landscape. This landscape, which continues till today, is populated not only with guilds, publishers and printers, but also with authors. The journey became somewhat troubled by growing trading and imperial territorial concerns, especially with the growing rate of piracy. This resulted in numerous bilateral copyright treaties in the eighteenth and nineteenth centuries, which finally culminated in the first international copyright agreement in 1886. International norm setting still continues with countries mapping their national legislation to match the rules set out in the 1994 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the two 1996 World Intellectual Property Organization (WIPO) treaties on copyright, performances and phonograms and most recently (and controversially) the 2011 Anti-Counterfeiting Trade Agreement. These conventions and agreements are, in turn, based upon centuries of domestic jurisprudence adopted and applied in the major actor states, such as France (in relation to the Berne Convention, for example), and the United States (in respect of the TRIPS Agreement, for example).

Second, many laws are also mapped out to conform to regional and domestic interests, needs and temperaments, thus creating a copyright diversity in terms of protected subject matter and scope of protection, outside international norms. This second map is closely linked to the third and final map which charts nations' legal journey out of the shadows of empires. Birnhack's chapter, for instance, describes how Israel has begun revising its copyright traditions by adapting and incorporating, in certain areas, a more instrumentalist US approach. Daley's chapter on Jamaica is illustrative of the difficulty a nation faces when it wishes to embark on a new journey, in order to protect its own creative industries. The chapter by Agitha and Gopalakrishnan reveals how India is firmly sailing away from English law towards a framework more suited to its more complex needs to protect its world famous

entertainment industry, while ensuring affordable access to and cost of educational and cultural goods. Similarly, Ng-Loy's chapter on Singapore reminds us that all countries, after going through an almost obligatory anti-copyright phase, tend to go into reverse gear and embrace international copyright norms, once an optimal level of development is reached.

As some chapters show, the mapping journey enables us to appreciate how legal 'traditions' are born and mapped, and even steadily adhered to, despite the passage of time, as in South Africa. Other chapters reveal a silent tension as emotional sentimentality towards the 'old' common law rules set down under the Imperial Copyright Act struggles with a more robust need to adopt fresh sentiments set down under the 'new' copyright order, as represented chiefly by the United States. Such tensions are revealed in the jurisprudential concerns as to the ambit of originality, the feasibility of moral rights in a digital age, and the perennial debate as to whether we need to mould the 'fair dealing' defence along the lines of 'fair use'. These issues are adroitly dealt with in almost all the chapters, which show how tenacious older rules are, even in more modern, technological settings. One clear nostalgic journey taken by some authors, including Ricketson on Australia, concerns the length of the taut and slender 1911 Copyright Act. Is life so complicated today, Ricketson asks, that we need such massive copyright statutes?

Other chapters, conversely, reveal a struggle to discard the 'imperial norms' of the 1911 Copyright Act, as well as to resist 'neo-imperial norms' under the TRIPS Agreement, modern US copyright law, and even Britain's new heritage of a copyright system tempered by 'civil law' notions. This struggle to find a new copyright landscape is evident in all the writings herein. McLay's chapter, for example, cogently sets out New Zealand's dilemma in leaving the British copyright mould, and forging a new path. Gendreau's chapter shows us how a nation, with a mixed copyright legal heritage, manages to resist the tidal forces of history, law and international politics to steer a 'common/civil law' approach.

Has the sun finally set over the British copyright empire? Suthersanen laments in her chapter that the United Kingdom has probably lost her copyright navigational map, having succumbed to an extended period of legal storms while slowly manoeuvring across the EU legal ocean. Nevertheless, despite the fact that all the stories within this volume represent a different legal evolution, it is still possible to say that they all are part of the British copyright legal family. It is also possible to say that they all have a different view of the legal landscape for tomorrow. Is Britain still influential in these other copyright worlds? The answer

appears to be: 'Yes, of course. Sometimes, her law is very influential. But you know – perhaps we need to embark on our own courses now.'

