Preface

The importance of copyright in law and modern society cannot be over-emphasised today. But it is not only the growing share of the ‘creative industries’ in the economy which indicates that importance. Copyright also provides an increasingly relevant and powerful legal device for the total commercialisation of humans and things that engulfs every aspect of human life in accordance with the prevalent ideology of the globalised market. The creed of the all-encompassing market resorts more and more to copyright to achieve its objectives, and copyright in its versatility serves these objectives exceptionally well.

This book discusses the making of property out of creative works through the legal mechanism of copyright. It shows the manner in which the law translates a great variety of expressions of the human mind into its normative system and transforms them into the property right of copyright, or, on the European continent, *droit d’auteur*. It deals with the role of philosophical and economic justifications for the legal artifices of property and copyright-property as critically informed confirmation of the present state of affairs, and it looks at the relationship of copyright to the ‘public domain’. The discussion will then focus on the legal powers and inherent limitations of the property right of copyright. The book will also examine the popular ‘death of the author’ ideology that is based on a questionable interpretation of intellectual history, and it will show that the true effect of this school of thought is to liquidate the individual human author in favour of an ostensible concern for collaborative and anonymous authorship, but in fact for the benefit of the (usually corporate) copyright owner. This liquidation carries on: the final parts of the book will discuss the alienation or transfer of copyright-property and the alienation of the author from his/her work, as well as the commodification of human authors themselves as objects of property through their works. At an international level, this legal, commercial and managerial construct becomes a basis for neo-feudal and neo-colonial developments. Copyright is as good or as bad as the human actors who make and use it.

The structure of the book can be compared to a wheel: the axle bearings are Chapter 1 (concepts of dematerialised property and copyright-property)¹ and Chapter 2 (justification of copyright-property and concept of the public domain), and Chapters 3–6 are the spokes of the wheel (Chapter 3: limitations to the powers of copyright ownership; Chapter 4: authorship, creativity and ownership; Chapter 5: alienation; Chapter 6: neo-feudal and neo-colonial features of international copyright protection). Thus Chapters 3–6, while fairly independent from one another, are all based on the concepts and terminology of Chapters 1 and 2. References throughout the text guide the reader to connect the necessary passages.

The book is a contribution to contemporary debates in copyright law, but it does not aim to be a comprehensive work on copyright. The discussion confines itself to areas where I thought I could make an original contribution, and I saw no need to give an exposition of the law beyond what is necessary for the arguments developed here; fortunately there are a number of good copyright textbooks in the UK which provide a more comprehensive survey of the black-letter law if required. So there is a lot of discussion on the subsistence of copyright and its proprietary nature, but little on infringement; the special problems copyright faces in relation to digital rights management, computer programs and the internet are mentioned in passing only, and issues of competition law have not been dealt with in the context of copyright licences. These matters would be appropriate for separate studies. In the passages on comparative copyright law there is more emphasis on UK law and the author's rights systems (predominantly France and Germany) rather than on US copyright law, since this jurisdiction is most broadly covered in the existing literature. It may be surprising that seemingly familiar themes of copyright theory have been discussed at great length, especially Hegel's *Philosophy of Right* and Marx's alienation theory, but during my research I realised with great astonishment how little these authors are properly understood in the Anglo-Saxon world, despite the fact that they are frequently referred to. The problem starts with unsatisfactory translations from the German in which, for example, the philosophically different terms *Entäußerung*, *Veräußerung* and *Entfremdung* are rendered indistinguishably as 'alienation', so I worked entirely from the original German texts. The reader of an English translation will probably find it hard to believe that the earlier Marx is remarkably clear and fairly easy to read in the original. It might be that in the context of

¹ Parts of Chapter 1 have also appeared as a book chapter (dealing with copyright, patents and trade marks) 'Intellectual Property and the Concept of Dematerialised Property' in S. Bright (ed.), *Modern Studies in Property Law*, Vol. 6 (Hart Publishing, 2011), pp. 361–383.

copyright law Hegel and Marx have been discussed in English adequately for the first time in this book.

Some statements in the book may be perceived as polemical, but in my experience a position that conforms to the mainstream of scholarly teaching of any particular era is often quickly labelled as scientific, while heterodox views tend to be dismissed as polemical. I do not shy away either from occasional moral judgements in relation to some untenable conditions. One should not stretch academic disinterestedness towards opportunism; academics should rather try to regain the position of intellectuals with an opinion in the public debate.

A lot of academic literature has been published in relation to some of the discussed areas, and not all could be referred to. This is to avoid duplications; occasionally material is regrettably merely obscure academic prose that benefits most from not being cited; and some work would have deserved a separate and more extensive critical discussion which would have gone beyond the space available.

This book started its life in Leicester, a town where the word 'province' obtains its meaning to the full, and was completed in Glasgow, an intellectually and aesthetically infinitely more inspiring place. My academic institutions assisted my book project in that they did not extend my existing teaching and administrative duties during my time of writing; nevertheless the completion got delayed significantly. I would like to thank my publishers for their sustained patience. I would also like to thank colleagues and friends for ideas and inspiration. But assertion of authorship also means responsibility, so any errors are obviously mine.

More than 300 years ago the Statute of Anne stated in its preamble that it was 'for the Encouragement of Learned Men to Compose and Write useful Books'. It is for the readers to decide whether this book is useful. Copyright did not encourage me to compose and write the book, but these days it is already a success if copyright does at least not discourage from creating. If this book can assist in the cutting back of copyright protection to reasonable dimensions, it will have achieved a lot.

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