
The Copyright Modernization Act of Canada became law in 2012, after three failed bills were tabled by two different governing parties over seven years. In that time, copyright evolved from a technocratic issue affecting creators and content industries to an intensely polarizing issue with strong ties to public opinion and grassroots activism in favour of users’ rights. Dynamic Fair Dealing: Creating Canadian Culture Online examines copyright law from a distinctly Canadian perspective and provides valuable insight into how Canadian copyright law has emerged in its current form, how it is perceived and enacted by creators and users, and how it might be further reformed in the future.

Rosemary J. Coombe, Darren Wershler, and Martin Zeilinger characterize Dynamic Fair Dealing as an intentionally provocative manifesto in favour of a robust fair dealing culture in Canada (p. 3). They have gathered a diverse group of scholars to present case studies on different communities, with the goal of exploring Canadians’ actual practices. They argue that fair dealing should be seen as “dialogic, performative, and continuous” (p. 5), as changes in technology and cultural practices affect how fair dealing exceptions are defined and constituted. Fair dealing is defined as a dynamic practice, or practices: the actions of individuals or communities that “are either appropriated into the existing hegemonic mainstream or safely bracketed at the margins of society” (p. 61). Practices of copying are constantly evolving and being negotiated, and so rather than a discourse of law, copyright becomes an ongoing negotiation within communities—one that is shaped by the law, but also by individuals’ and communities’ sense of fairness. “Fairness” has never been defined in Canadian law or by the courts; therefore, it is these practices that will ultimately affect how fairness is codified. The authors contend that Canada’s narrow exceptions for fair dealing should be replaced with broader, more affirmative language using the discourse of users’ rights.

Although each chapter in the anthology uses a different methodology, there are three clear approaches: first, legal scholarship, in which primary documents in the form of legislation or court decisions are analyzed (e.g., chapters by Bita Amani and Carys Craig); second, case studies, in which community practices are described (e.g., chapters by Suzanne Zelazo, Martin Zeilinger, and Alexandra Boutros); and finally, personal accounts from individuals working in creative or pedagogical fields (e.g., chapters by Marcus Boon, Kenneth Goldsmith, Matt Soar, and Alec V. Couros). Often there is overlap among these methodologies, which helps create a fuller, more historicized picture of the process by which certain practices developed or certain legal decisions were reached. Most often, these approaches serve to deconstruct the “naturalness” of copyright. The authors suggest that people are more likely to regulate cultural production through group norms and practices rather than by strict adherence to the letter of the law.
This interdisciplinary approach gives a strong sense of both the scope of the issues and the conversation that can occur among the various levels of interpretation. In all the chapters, the emphasis is on emergent and contingent practices. These create discourses of copyright that may have only a tenuous link to copyright's legal language. The overall argument is that copyright law is insufficient as a tool to deal with peripheral communities of practice. Many of the authors offer policy suggestions or note how alterations to copyright legislation would strengthen users' rights without undermining the purpose of copyright.

It is rare for these essays to step outside the current paradigm of copyright. While Coombe et al. make a claim to being provocative and prescriptive, policy suggestions are geared toward the improvement, not the re-creation, of copyright law. Authors deconstruct the law and note how it produces resistant communities of practice. Yet these communities maintain the ideals of copyright, such as rights of authorship and acknowledgement, even as they claim to subvert copyright's intentions. For example, Craig argues that the public domain remains tied to the system of copyright even as it attempts to make works more accessible to more users. The access that the public domain promises is often limited and contingent, yet the expansion of the commons and the public domain is seen as an important users’ rights issue. The result is a resistance that both rejects and embraces anti-copyright stances as necessarily peripheral to copyright's centrality.

The strongest chapters in the book are those that deal with the issue of copyright in the context of First Nations' autonomy and cultural heritage. Coombe and Nicole Aylwin discuss the intersection of the paradigm of intellectual property with that of cultural copyright, the idea that some goods, materials, and ideas are sacred to the cultural heritage of a minority or indigenous group. For a long time, indigenous culture especially was treated as a “de facto public domain” (p. 205), without regard for the creative freedom, control, or legal rights of either its creator or the community from which it derived. Canada has traditionally (though perhaps nominally) valued cultural diversity, but this is not reflected in our Internet Protocol (IP) and copyright laws. It is problematic to assume that a single public domain is the right answer for all cultural groups; after all, it is the (Western) concept of public domain that has appropriated so much indigenous culture to begin with and, as a result, has taken away these groups’ and artists’ access to the economic/political use of tools such as IP and copyright. However, digital technologies also make the dissemination of cultural artefacts and knowledge much simpler. Indigenous and minority groups can reach out to one another, campaign for greater awareness of the problem of appropriation, and take a more visible political stance with respect to groups’ autonomy, rights, and access to resources. Cultural heritage, as Coombe and Aylwin aptly demonstrate, has become a tool that helps these groups become visible; the living culture is circulated as much as the historical.

The anthology’s articles wrestle with many emerging issues in the study of copyright law and are well chosen to be read in conversation with each other. They investigate the extent to which fair dealing may be seen as a dynamic and emergent set of practices; how ambiguities in the Copyright Modernization Act and in the Supreme Court’s rulings on several cases impact how copyright law is interpreted and imple-
mented; and how users’ rights and accessibility is, and ought to be, balanced with authors’ rights and economic protection of creative works. Its broad approach makes it a worthwhile anthology for people from many disciplines. Dynamic Fair Dealing is an excellent overview of the effects and rhetoric of changing copyright law in a Canadian context.

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