

## BOOK REVIEWS

*Copyright Law and the Information Society in Asia* BY CHRISTOPHER HEATH and KUNG-CHUNG LIU, eds. [Oxford and Portland, Oregon: Hart Publishing, 2007. xxiii + 276 pp. Softcover: £45]

This publication is volume 26 of the series *Studies in Industrial Property and Copyright Law*, a joint project by The Max Planck Institute, Munich, The Academia Sinica, Taipei, and the IP Academy Singapore. While Copyright law and the Information Society is undoubtedly one of the hottest current topics, it is one not adequately written on. There is no defined content and the treatment in other works of the same sort tends to be cursory, fragmented, and jurisdiction specific. This volume edited by Dr Christopher Heath, a member of the Appeals Board at the European Patent Office in Munich, and Professor Kung-Chung Liu at the Academic Sinica in Taiwan, is a pioneer in three senses. First, it brings together Asian, European, and U.S. perspectives. For each topic, there is an in-depth introduction comparing the European and the U.S. approaches, followed by Country Reports for China, Hong Kong, Taiwan, Japan, Korea, Singapore, Malaysia, Thailand and the Philippines. Such depth and breadth are unprecedented. No single author would have been able to accomplish such an aggressive project, which was made possible by having experts from different jurisdictions write their own Country Reports. In addition to Dr Heath and Professor Liu, who were responsible for the Japan and Taiwan reports respectively, regional experts include Dr Wei Zhi, Peking University Law School (China); Ms Gabriela Kennedy, Lovells (Hong Kong); Dr Byung-il Kim, Inha University (Korea); Ms Ng-Loy Wee Loon, National University of Singapore (Singapore); Mr John Chong, Mindvault (Malaysia); Mr Rutorn Nopakun, Domnern Somgiat & Boonma Law Office (Thailand); and Mr Alex Fider, Angara Abello Concepcion Regal & Cruz (Philippines). The diverse backgrounds of the contributors, a representative mix of academia and the profession, is the second unique feature of this book. Finally, the work has the most comprehensive horizontal (topics covered include digital works and parallel imports, collecting societies, anti-circumvention and digital rights management, copyright contracts and antitrust, and contributory and vicarious liability for copyright infringement) and vertical (the past, the present and the future) coverage of the subject.

The impact of the technological explosion on copyright law is vividly depicted in Chapter 1 “The Expansion of Copyright Law and its Social Justification”, where the historical background and the recent piecemeal expansion of copyright law (such as the extension of the protection period, and the conferment of additional rights) are

systematically traced by Professor Reto Hilty of the Max Planck Institute, Munich. He concludes that even a complete overhaul of the copyright system may not fully address the issues we are facing in the information society. The traditional concern about “striking the correct balance between access and incentives” is given a new perspective with the recent leap forward in digital technology. If works can now be disseminated via the Internet with no loss of quality and reproduced at virtually no marginal cost, how can the commercial publishers justify the high subscription fees they charge? If “open access” or “open source” is the way forward, would further expansion of the copyright regime give any incentive to the individual authors as opposed to the commercial publishers? In Professor Hilty’s view, five lessons are to be learnt: first, “that the divide between conflicting interests runs not so much between creators and consumers as greatly emphasized by the traditional perception of copyright” (at 26). Instead, the conflict should be between the copyright-exploiting industry, which wants to optimise its profits by all possible means they can deploy, and the end consumer, who wants to pay as little as possible to have access to and use of the copyrighted works. It follows that what the copyright industry needs is not an author-centred copyright system, but a mechanism for the economic protection of its investments. Second, “[w]e should realize that our traditional, author-focused *droit d’auteur*-thinking no longer fully meets the requirements of the industry and answers may be found in a competition-based legal instrument so that future developments should be developed along such lines” (at 27). With that in mind, we should also realize that, thirdly, “the quite justified economic interests of the copyright industry end at that point where the justified consumer interests begin” (at 27). Fourthly, an overly stringent protection of copyright in the digital environment runs counter to the principle of encouraging innovation and creativity as proclaimed at the World Summit on the Information Society (December 2003). Finally, “we cannot simply enlarge the categories of copyright if we really want to improve the situation of the creators” (at 30).

Alternatives to, and the inadequacies of, copyright law are then explored in the ensuing chapters. In Chapter 2, “Internet Trade, Digital Works and Parallel Imports”, Dr Heath questions the applicability of the traditional concept of rights exhaustion to Internet trade. Professor Liu then examines “The Collective Exercise of Copyrights” in Chapter 3, where the pros and cons of such concerted actions are considered. While we may find them an effective alternative to extensive criminalization of copyright infringements, we should not lose sight of the market power and antitrust concerns that such actions may raise. The latest technical, contractual and copyright developments are then discussed in Chapter 4, “The Law on Anti-Circumvention and Digital Rights Management”, Chapter 5 “Copyright Contracts, Public Policy and Antitrust”, and Chapter 6 “Contributory and Vicarious Liability for Copyright Infringement”, followed by an economist’s approach towards copyright law in the concluding chapter, “Looking Forward: Contemporary Trends of the Copyright Economics Research in the Digital Era”.

The book is consistently thought-provoking to say the least. It assumes prior knowledge not only of copyright law, but also of technology, commerce and economics. Any advanced copyright researcher should have a copy.

ALICE LEE  
University of Hong Kong