Preface

Every secret of a writer’s soul, every experience of his life, every quality of his mind is written large in his works. - Virginia Woolf

Unprecedented advances in technology have challenged copyright structures globally and are having a disruptive effect on traditional publishing models and the legislative provisions that underpin them. This book focuses on the challenges presented by such a transitional environment from authors’ perspectives and considers how the development of a digital publishing arena has impacted authors’ copyright expectations. Based on a range of primary sources, including published authors from each Australian State and Territory, publishers and specialist academics, as well as an analysis of legislation, case law, publishing contracts, and relevant literature, the book addresses current copyright structures underpinning Copyright Law in Australia and ventures into new ground in copyright research in written work.

It also considers the global implications of changed copyright models and examines the ways in which authors have responded to the fluid environment of change in practical and progressive ways. Primarily, it has become evident that authors need to equip themselves to deal with the demands of new media technology to ensure that they are adequately rewarded for their creative efforts, and to exert power as a significant stakeholder group in the digital environment. Copyright laws have traditionally adapted to changing technology to meet the needs of copyright users. That was the purpose when the English Crown started to regulate Caxton’s revolutionary printing press technology and it remains a focus of copyright legislation today. How authors cope with this transition depends on how they utilise the opportunities that arise as a result of technological change. The findings of the qualitative and quantitative research showed that, whilst publication in the digital sphere poses significant opportunities for book authors, their responses to copyright challenges are varied and inconsistent, depending on their viewpoints.
Recent US Supreme Court decisions such as *Kirtsaeng v. Wiley and Sons, Inc.*—which dealt with the application of the “first sale doctrine” in the cross-border sale of text books on eBay—have significantly affected the enforcement of territorial copyright by authors and publishers. Territorial copyright borders have become blurred, difficult to enforce in view of recent precedent, and are ineffective in preserving authors’ copyright and the cultural dimensions of their books. Clearly, new copyright solutions are required, demanding that authors embrace digital technology, improve their knowledge of online publishing, and apply creative publishing models to their advantage.

These issues form the central focus of the book, which has been largely informed by research conducted during the completion of my PhD thesis. A brief summary of the book chapters follows below:

**CHAPTER 1: INTRODUCTION**

This chapter contains a summary of the issues examined in this research and notes past research conducted in this area. It briefly discusses the evolutionary nature of copyright and provides an overview of the digital considerations forming the backdrop for this book. It concludes that factors such as developments in technology, parallel importing concerns, and changing trends in publishing and marketing are prompting authors to cultivate a greater awareness of issues that affect their livelihood. Google’s unauthorised digitalisation of copyrighted work and the resulting legal issues that arose from this action are one such example. These developments imply a movement towards a global awareness of copyright issues – rather than relying on Australian copyright law alone, authors have to consider how their copyright is being impacted on an international scale. This chapter commences the discussion on the way in which authors are navigating their copyright in the expanded literary sphere and how they are dealing with digital technology in their creative work and publishing contracts. On a deeper level, it also introduces the discussion on the author’s role in the literary and the greater public sphere and the relationship between the competing groups in the publishing industry.
CHAPTER 2: HISTORY AND DEVELOPMENT OF COPYRIGHT

Chapter 2 deals, first, with the history and development of copyright law internationally and, second, with Australian copyright legislation and legislative objectives. The discussion considers the meaning of copyright and, thereafter, studies the development of the copyright framework in Australia. Recent and current copyright issues, such as the parallel importing debate, are mentioned briefly. Lastly, it reflects on current moral rights provisions in Australian law and concludes with reference to the 2011 Hargreaves Report and possible future implications for Australian copyright law.

In a nutshell, this chapter provides an overview of the development of copyright and copyright legislation, as well as reference to some current challenges in the field of copyright law facing Australian authors. It concludes that copyright law has been evolving to adapt to new technologies and that electronic publishing may require further changes. The UK has recognised the need for transformation pursuant to the Hargreaves Report, and submissions by the Australian Copyright Council Expert Group have subsequently addressed some of the issues covered by the Hargreaves Report. However, a review of the Australian copyright system is imminent in 2012. The Authors Guild case is illustrative of the transitional challenges faced by Australian authors in protecting their copyright in the digital domain. However, the proactive involvement of the Australian Society of Authors in this US case is a positive step for Australian authors in the ongoing protection of their digital copyright.

CHAPTER 3: THEORETICAL AND PHILOSOPHICAL FOUNDATIONS

This chapter deals with the theoretical foundation of copyright law and considers the various philosophical theories in this regard. The link between copyright law and the philosophical ideals that underpin its theory and interpretation is noted and considered within the ambits of the public sphere as proposed by Habermas. The discussion also includes an explanation of the public domain and focuses on the following theories in particular: the utilitarian approach, the public benefit theory, the natural rights theory, and the moral rights theory.
The theories lay the foundation for an examination of authors’ roles within the current Australian copyright structure and tie in the expectations of authors from a natural right and moral rights point of view with the broader utilitarian principles followed in copyright legislation. Furthermore, this chapter provides a basis for further discussion of authors’ sphere within the public sphere and how authors function in relation to other competing subaltern spheres. In the next chapter, the focus shifts to the subject of authorship, dealing specifically with the concept, definition, and rights of the “author.”

The chapter concludes by comparing the theories and noting their alignment and divergences.

CHAPTER 4: AUTHORSHIP – FROM QUILL TO KEYBOARD AND CYBERSPACE

The role of the author and the meaning of authorship is examined, first, in the context of legislation and case law and, second, as seen by critical theorists. The author’s position as natural rights holder and moral rights holder within the ambit of the law is considered against existing legislation and case law. The discussion then moves to an account of the author as creator, first in the 21st century and, thereafter, in the digital era. New challenges to authorship and changes in the perceptions of readers are highlighted and discussed.

Evidently, the definition of “author” is an ever-expanding and evolving concept, influenced by a changing public sphere and, more specifically, by technological advances. The dual nature of the author’s persona as creator and rights holder has also been emphasised by the changing role of authorship in the new technology. One may validly observe that the effects of hypertext, reader participation, and increased collaboration have created a new breed of writer: the digital author. However, the quality and quantity of creative content and the identity of the writer remain distinguishing factors in this electronic sphere, separating the author from the reader/commentator. As with most things, change is inevitable and survival depends on the timely recognition of changing circumstance. Readers are becoming writers, writers are turning into authors, and authors have to rise to the challenge of distinguishing themselves on the World Wide Web.
CHAPTER 5: COPYRIGHT SUPPORT STRUCTURES

This chapter deals with government and other support structures available to authors internationally and nationally in relation to the enforcement of their copyright and funding. It provides an overview of how the Australian government support structures interact with equivalent global structures and how these mechanisms are utilised to supplement authors’ incomes. These structures rely on the premise that copyright law creates incentives for people to invest their time, talent, and other resources in the creation of new material that benefits society and includes government support structures such as grants as well as licensing schemes such as the Copyright Agency Limited (CAL), Public Lending Rights (PLR), and Educational Lending Rights (ELR).

This chapter, thus, provides a bird’s eye view of international copyright structures as well as Australian government agencies and schemes that support authors in their creative work. The benefits provided to authors by these programmes, such as the CAL, PLR, and ELR licensing schemes, are evident and signify an effort on the part of government to recognise the importance of financial rewards for creators. Chapters 8 and 10 will investigate how authors have benefited from these resources, and whether they regard the support structures as adequate for their needs.

CHAPTER 6: THE PUBLISHING INDUSTRY

This chapter examines the current evolving publishing framework in Australia and the relationship between authors and their publishers, noting the competing interests of the various subaltern spheres (such as the “author sphere” and “publisher sphere”) within the greater public sphere. A comparison between a standard publisher’s contract and the model contract recommended by the Australian Society of Authors (ASA) provides a source for analysis and discussion, which relevantly reflects the nature of the relationship between author and publisher. The issue of digital publishing is investigated to ascertain what constitutes an equitable arrangement for authors. Finally, new business models in publishing are considered and observations are made on copyright protection measures on the Internet, alternative licensing models such as the Creative Commons, and the “honesty box” model used by some authors. A brief discussion of the anti-copyright actions of Google is also included, and in conclusion, the author-publisher power balance is addressed, taking into account the different characteristics of print books and ebooks.
The chapter makes the point that some may argue that the author has gained and the publisher has lost traction in the copyright balance, as authors are able to self-publish their ebooks or do so through online publishers without reliance on traditional print publishers. Others point towards the discrepancy in the terms of existing publishing agreements as opposed to those proposed by authors’ societies and argue the opposite, namely that authors remain in a weak position vis-a-vis publishers. Publishing on the Internet may be easier, they would say, but the marketing of the book remains an issue, as some authors point out. It appears that, to a great degree, this is why some authors give their ebooks away for free – in order to gain exposure and develop a following of readers, which in turn assists them with selling their printed books in bookstores. This new breed of author uses the Internet to their advantage and employs new technology to publish and market their books.

It concludes that digital technology has brought new challenges and may demand a wider range of skills from authors who wish to benefit from the increased opportunities. It has become apparent that authors who cannot or will not master these skill sets will continue to be reliant on publishers to publish and market their work—whether online or in print—to the reading public.

CHAPTER 7: RESEARCH AND METHODOLOGY

As an inter-disciplinary project, the research underlying the book—discussed in this chapter—employs a multi-method research methodology. The research design is characterised by a qualitative/quantitative research model, incorporating survey data and in-depth interviews. Purposive sampling has been employed to secure in-depth interviews with published authors and to involve qualified respondents in an online survey. The data obtained in this manner provides the basis for the findings and conclusions in chapters 8, 9, 10, and 11. This chapter considers the purpose and scope of the research and discusses the two-stage strategy used to obtain the data, acknowledging the limitations of the research strategy, on the one hand, and the purposeful nature of the information obtained in this manner, on the other. By implementing this process and utilising these two “purposeful samples” of published authors, this research aims to provide a window into the collective viewpoints of a group of Australian authors on various copyright issues, and to investigate how these viewpoints affected their creative practice.
CHAPTERS 8 AND 9: RESEARCH FINDINGS

Chapter 8 deals with the findings in relation to the first two research topics, whilst chapter 9 deals with the third topic. Specifically, chapter 8 records the findings and preliminary observations in relation to authors’ perceptions of copyright and the copyright framework, whereas chapter 9 considers authors and publishers in a changing publishing industry. Chapter 8 also includes a description of the demographics of the survey respondents and information on their incomes. Further issues canvassed in chapter 8 are: whether authors see copyright as an incentive to create, how they view moral rights, their thoughts on existing copyright structures such as CAL, perceived problem areas in the field of copyright, and whether they regard authors as adequately protected by copyright legislation. Chapter 9 focuses on the relationship between authors and publishers, publishing contracts, ebooks, Google, and publishing options for authors in the digital world. Preliminary conclusions regarding authors’ views on these issues lay the foundation for an in-depth discussion and analysis in the next chapter.

During the second part of the investigation, it becomes evident that copyright and copyright legislation are not viewed by the author participants as something localised, to be seen only in an Australian context, but rather in the wider context of global copyright. The reasons for this perception appeared to be two-fold: firstly, many of the interviewees and respondents have published books in other countries and have to contend with international copyright issues and regional considerations, and secondly, with wider application, media platforms and structures such as the Internet and a variety of electronic devices provide increased forums for publication on an international level. These factors prompt authors to contemplate a departure from traditional copyright frameworks and, in many cases, to embrace alternative frameworks that allowed them to function creatively. These alternative structures, such as the Creative Commons and various forms of online publishing, as discussed more fully in chapter 6, provide increasing options for authors and publishers.

Once the enquiry shifts from traditional publishing models and their supporting legislative structures to the wider options offered by new technology, it also becomes clear that the majority of interviewees and survey respondents acknowledge that most preconceived ideas of copyright legislation would have to adjust in keeping with public expectations and the needs of copyright creators. As evidenced by both the interviews and the online survey results, many authors support a need for change and are intent upon making technological innovations work for, rather than against them.
These findings also highlight some discrepancies in authors’ perceptions and levels of knowledge in relation to copyright and the current copyright structures.

CHAPTER 10: DISCUSSION AND ANALYSIS

A discussion and analysis of the key aspects emerging during the course of the research comprise the basis of this chapter. It addresses, *inter alia*, the effect of the parallel importing debate on authors’ rights, the issue of publishing contracts, the idea of a “heavenly library,” and copyright protection on the Internet, including a discussion on how existing territorial copyright structures may be affected by electronic publishing. This chapter also considers the Google initiatives and possible new business models for authors. The emerging theme of resale royalties for authors is examined and compared with the Resale Royalty Right for Visual Artists Act 2009. In conclusion, observations are made on the role of the author in the changing publishing landscape, situating the author as member of the “author sphere” in the context of the public sphere.

It shows that the Internet has expanded the boundaries of copyright protection that current legislative structures may not offer authors the necessary protection. Several authors mention the need for new copyright solutions, although the findings showed divergent views on the subject. While some suggest that authors should be more proactive in their approach to copyright, others are of the view that the existing copyright structure is insufficiently suited to copyright use in the digital domain. The Internet has created a stronger focus on public benefit considerations by providing free access to information. The chapter proposes that this trend has, to an extent, eroded both authors’ private creative rights and the utilitarian model. In order to remain competitive and gain acceptance in the marketplace, they have to be flexible in their copyright approach and embrace new business models. Conversely, in order to remain creative, they require reward. This dichotomy has resulted in some uncertainty in the author ranks about future copyright models, despite opportunities for new publishing and licencing opportunities.
CHAPTER 11: CONCLUSION AND RECOMMENDATIONS

This chapter addresses the research topics based on the discussion and analysis of the findings in chapter 10. It considers, first, what authors’ views are on copyright and how these perceptions influence them in their creative work. Second, it examines the role of copyright support structures and the legislative framework in order to ascertain how they are perceived by authors. Third, it discusses how authors have been affected by changes in publishing and, more specifically, the impact of electronic publishing. This discussion includes observations on the author-publisher relationship, publishing contracts, and future business models for authors. Finally, the research topics are considered against the backdrop of philosophical theory with consideration of the author’s place in the literary and public spheres.

Factors such as developments in technology, parallel importing concerns, and changing trends in publishing and marketing are prompting authors to cultivate a greater awareness of issues that affect their livelihood. Google’s unauthorised digitalisation of copyrighted work and the resulting legal issues that arose from this action are one such example. The conviction of Apple for anti-trust collusion with five large publishers to increase the price of e-books will also have repercussions for authors and traditional publishers. These developments imply a movement towards a global awareness of copyright issues – rather than relying on territorial copyright law alone, authors have to consider how their copyright is being impacted on an international scale.

The recommendations included in this chapter reflect an examination of the views, opinions, and impressions of authors with regard to copyright, copyright structures, and the changing publishing industry at a critical moment in history. They suggest changes that will invigorate and empower the often marginalised subaltern sphere of authors who are caught at the crossroads of change in the publishing industry. The chapter concludes that copyright perceptions of Australian authors in the literary sphere are subject not only to current legislative provisions but also encompassed by the expanding digital sphere within the broader public sphere envisaged by Habermas. In considering these findings on both a functional and philosophical level, against the backdrop of existing legislation, policy, and theory, it is shown that authors will have to equip themselves to deal with the challenges of new media technology to ensure that they are adequately rewarded for their creative efforts. It suggests that this will require an increased familiarity with electronic
licensing agreements and copyright protection measures, knowledge of publishing options, and a stronger awareness of royalty provisions. It will also require authors to assert their rights as creators and to be consistently proactive in addressing future copyright challenges.

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