

The IP Law Book Review

Published by the Intellectual Property Law Center
Golden Gate University School of Law

ISSN 2154-6452

Vol. 5 No. 2 (June 2015)

EDITOR

William T. Gallagher
Golden Gate University School of Law

EDITORIAL ADVISORY BOARD

Barton Beebe, New York University School of Law
Dan L. Burk, U.C. Irvine School of Law
Margaret Chon, Seattle University School of Law
Peter Drahos, Australian National University
Shubha Ghosh, University of Wisconsin School of Law
Christine Haight Farley, American University Washington College of Law
Smita Kheria, University of Edinburgh
Mark P. McKenna, Notre Dame Law School
Alain Pottage, London School of Economics
Jessica Silbey, Suffolk Law School
Peter K. Yu, Drake University Law School

**PUTTING INTELLECTUAL PROPERTY IN ITS
PLACE – RIGHTS DISCOURSES, CREATIVE
LABOR AND THE EVERYDAY**, by Laura
Murray, S. Tina Piper and Kirsty Robertson

Reviewed by Luke McDonagh, Cardiff University
Law School

**THE STATE OF COPYRIGHT: THE COMPLEX
CULTURAL CREATION IN A GLOBALIZED
WORLD**, by Debora J. Halbert

Reviewed by Sara Bannerman, Department of
Communication Studies and Multimedia, McMaster
University

**INTELLECTUAL PROPERTY, INDIGENOUS
PEOPLE, AND THEIR KNOWLEDGE** by Peter
Drahos

Reviewed by Ruth L. Okediji, University of
Minnesota Law School

GOLDEN GATE UNIVERSITY

School of Law

The IP Law Book Review

IP Law Center, Golden Gate University School of Law

Vol. 5, No. 2 (June 2015) pp. 15-18

THE STATE OF COPYRIGHT: THE COMPLEX RELATIONSHIPS OF CULTURAL CREATION IN A GLOBALIZED WORLD, by **Debora J. Halbert**. Routledge, 2014. 267 pp. Hardback \$155.⁰⁰

Reviewed by Sara Bannerman

Department of Communication Studies and Multimedia, McMaster University.
banners@mcmaster.ca

In **THE STATE OF COPYRIGHT: THE COMPLEX RELATIONSHIPS OF CULTURAL CREATION IN A GLOBALIZED WORLD**, Debora Halbert examines the transformation of the (mainly American) state and its relationship to copyright and the culture industries.¹ She tracks a number of trends: the transformation of intellectual property piracy into a national security threat; the increasing, and increasingly problematic, role of the state in policing national culture in an age of globalization; and challenges to the dominance of the culture industries in social life, economic relations, and foreign affairs. Grounded in critical political economy, Halbert's argument also draws on critical and postmodern theory to critique the role of the state in an increasingly commodified and increasingly globalized culture.

Halbert argues that the shape and role of the American state in creating and enforcing copyright law has transformed dramatically since the 1990s. These transformations take a number of forms. First, in Chapter 2, Halbert describes the reconfiguration of the US government bureaucracy to prioritize intellectual property enforcement—a reconfiguration that serves a rising class of intellectual property owners by producing a managed population of consumers for the information age (p. 28). From the establishment of the Under Secretary of Commerce for Intellectual Property heading the United States Patent and Trademark Office (USPTO)(p. 33), to the establishment of intellectual property subdivisions within government departments ranging from the Library of Congress to the State Department and the White House, to the creation of the intellectual property tsar and the establishment of an intellectual property committee at cabinet level (pp. 34-36), the bureaucratic transformation of the American state is far-ranging. With revolving doors between government and industry (p. 44), the newly-configured state stands ready to shore up concentration of ownership in IP-related industries, whether American or foreign-owned (pp. 48-49).

In Chapter 3 Halbert outlines a second transformation: the reconfiguration of the American foreign policy agenda and the framing of intellectual property piracy as a new national security threat. The construction of this discourse frames foreign states and intellectual property infringers as enemies, criminals, and terrorists who engage in cyberattacks and support terrorism. Such framing paves the road to increasing surveillance and to new forms of warfare (pp. 68 and 75). While some states, such as the UK, have resisted this IP-maximalist approach to some degree, many others have adopted it (pp. 78-79), making for possible fractures in the global community between IP-maximalists and opponents of the maximalist agenda (p. 80).

In Chapter 4 Halbert outlines a third transformation: the growing efforts of the American state to achieve legitimacy as the protector and promoter of American culture. Simultaneously, Halbert tracks the shift since the Cold War from state funding to market forces as the mechanism for cultural and economic promotion. Prior to the turn to copyright as a driver of information exchange (p. 88), the American state promoted American culture abroad and emphasized state funding of the arts, both as weapons in the Cold War. The end of the Cold War meant a drastic reduction in funding and an increasing reliance on market forces in the arts (p. 96). The American state, in adopting the neoliberal model of globalization, cultural export, and intellectual property, Halbert argues, has attempted to maintain a form of economic and cultural hegemony while simultaneously undermining the territorial boundaries of the nation state itself (p. 111).

In Chapters 5 and 6 Halbert troubles the connection between the nation state and culture. Drawing, in Chapter 5, on the example of the FIFA 2010 World Cup theme song *Waka Waka—This Time for Africa*, Halbert points to the fundamental hybridity of culture, and its tendencies to flow outside of national boundaries. The *Waka Waka* theme song, performed by Columbian pop star Shakira in an event based very much around “the national container”, was adapted from a song by the Cameroonian band Golden Sounds, who had adapted it from historical military marches. The words to the song, as well as the music and style, had circulated internationally for decades (pp. 118-119). Noting these international flows and the hypocrisy of cultural conglomerates in often failing to acknowledge their indebtedness to them, Halbert troubles the notion that the global South is one of the greatest sources of piracy. She draws on three case studies of Pablo Picasso’s “African” period, the Red Bull energy drink (which is the version of a Thai drink as marketed outside Thailand), and fan fiction to show that Western culture appropriates local and peripheral cultures in ways that cause that appropriation to be hidden and unacknowledged: “The West, especially the United States, tends not to acknowledge its cultural debts, even while demanding that the rest of the world pay it for its originality and commercial cultural products” (p. 137). While the appropriation and sharing of culture happens in many directions, the state, as well as international institutions, insert themselves into cultural flows, “reterritorializing” them, and establishing “rules of the game” that favor corporate entities (p. 136).

In Chapter 6, Halbert brings her discussion of cultural appropriation to bear on indigenous knowledge in particular. Too often, researchers and cultural producers have taken the knowledge and culture of indigenous peoples as “raw material” for knowledge and cultural production of the West (p. 149). Against this appropriation, Halbert notes that indigenous peoples have, in efforts to establish autonomy, made efforts to bypass the nation state, turning directly to systems of international governance to forge international community and to gain visibility. Indigenous peoples’ struggles at local, national, and international levels to disrupt traditional ideas about intellectual property offer “a catalyst for others who are also interested in a future for creativity that is more flexible than that advocated by the culture industry” (p. 144)—one that takes place outside of capitalist production. Rather than offering a policy prescription, Halbert outlines three possible paths forward: strategies to close and protect indigenous knowledge and culture, efforts to embrace market forces, and the construction of a new global indigeneity that ignores elusive “authentic” indigenous culture to construct a new sense of indigenous identity.

In Chapter 7 Halbert outlines a manifesto, or a set of policy proposals, regarding user generated content. She describes the history of the term “user-generated content” and the myths that the concept disrupts: the myth that creators create to make money, that culture is produced by professionals, and the myth of the romantic and original artist (p. 183). Halbert lauds the “disintermediated, and thus more authentic, political experience” that YouTube offers (p. 189) and the social and political value of user generated content (p. 188). She proposes that copyright law be loosened to allow “maximum creation of derivative works” (p. 197), the exemption of liability for platforms on which non-commercial derivative works are published (p. 197), penalties for overly aggressive notice and takedown procedures (p. 198), the preservation and protection of user generated content (p. 198), a shorter term of copyright with a renewal period (p. 198), and the expansion of the fair use provisions of American copyright law (p. 199).

Deeply interested in the idea of a non-commodified cultural future, Halbert, in her concluding chapter, draws richly on the Frankfurt School to condemn the culture industry (p. 221) as a form of prison that, mounted on digital wheels, becomes “a surveillance system built into the concept of the state itself” (p. 224). While revolutions, as the Frankfurt School scholars also noted, have failed, resistance is “as much about building something new as it is tearing down the old” (p. 225). User generated content is one remedy. Halbert therefore advocates “self-expression outside the framework of modern consumer culture” to create “a good life—a do it yourself (DIY) life” (p. 225).

While at times, such as in her discussion of indigenous knowledge, Halbert appropriately avoids policy prescriptions, this reader still feels that a broader manifesto or set of policy proposals, beyond the topic of user generated content, might help to address some of the other problems outlined so well in her book. How might the growth of the American intellectual property bureaucracy be transformed or curtailed? How might the American foreign policy agenda, which

frames piracy as a national security threat, be redrawn? What is the appropriate role of the state in promoting national culture?

It would be interesting, also, if Halbert were to expand her discussion of the transformation of the “state of copyright” to encompass the important transformations made not only to the American IP bureaucracy but also the similar transformations of other states, including other major power, middle powers, and countries of the South. The World Intellectual Property Organization (WIPO), sometimes working in conjunction with transnational rights holder groups, has undertaken massive projects and studies to transform the IP institutions of countries of the South, some under the rubric of its “development agenda”. These transformations seem as integral to the “state of copyright” as does the transformation of the American state that Halbert describes.

One of the tremendous strengths of Halbert’s work is her rich drawing upon the literatures of political science, law, cultural theory, and critical theory. As a result, her work speaks to readers in the field of law, but also to readers in political science, political economy, anthropology, cultural studies, and communication studies. *THE STATE OF COPYRIGHT* provides great insight into some of the most important questions of our time in the field of culture and creativity.

ENDNOTES

¹ *THE STATE OF COPYRIGHT* follows Halbert’s two previous books, *INTELLECTUAL PROPERTY IN THE INFORMATION AGE: THE POLITICS OF EXPANDING PROPERTY RIGHTS* (Quorum, 1999) and *RESISTING INTELLECTUAL PROPERTY* (Routledge, 2005); as well as her co-edited *COPY/SOUTH DOSSIER* (2006); and her co-EDITED *SAGE HANDBOOK ON INTELLECTUAL PROPERTY* (Sage, 2013).

Suggested Citation: 5 *The IP Law Book Review* 15 (2015)

© 2015 Sara Bannerman