

## REVIEW

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## Fair Deal or No Deal

A Review of

Murray, Laura J. and Samuel E. Trosow. 2007. *Canadian Copyright: A Citizen's Guide*. Toronto: Between the Lines.

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By the time that this review appears in print, Laura J. Murray and Samuel E. Trosow's *Canadian Copyright: A Citizen's Guide* will either have proven to be prescient, or will have been reduced to a powerful potential that was nevertheless betrayed by the actual events of history.

One major reason for the state of uncertainty that surrounds the arguments in this book is the Harper government's Bill C-61. Introduced at the end of the spring 2008 Parliamentary session, Bill C-61 will, if it passes into Canadian law, implement the World Intellectual Property Organization (WIPO)'s Internet Treaties, which Canada signed, but did not ratify, in 1996. These are the same treaties that served as the basis of the Digital Millennium Copyright Act (DMCA) in the U.S., a piece of legislation that many scholars, journalists and activists have argued is deeply flawed.

Murray and Trosow contend that Canada is under no obligation to ratify the WIPO treaties, but that if we *do* decide to ratify them, we should try to avoid the

DMCA's mistakes. In any event, if they continue, Canadians have a greater range of choices concerning how to implement them than the official discourse on the subject would suggest (34). Even if Bill C-61 is defeated, there is a larger problem: hard on its heels are a whole series of trade-related treaties that will place much greater pressure on Canadian lawmakers to conform to an agenda for intellectual property that better suits the desires of the U.S. entertainment industry than it does the rights of Canadian citizens.

It is precisely because of its explicit acknowledgement that this pressure is not likely to abate any time soon that *Canadian Copyright: A Citizen's Guide* will remain an important text, regardless of changes to the letter of the law. As the authors note, "all law is always developing in a complex and fitful way" (1). This is especially true of copyright law, which changes constantly as judgements are delivered, appealed and ratified or overturned as each case makes its way through the judicial system. If stabilizing copyright law is neither desirable nor possible in a democratic context, it is important to shift our perspective in a direction that will allow us to conceive of fair copyright not as an immutable edifice, but as a set of informed practices that are part and parcel of citizenship (2).

The first seven chapters of *Canadian Copyright: A Citizen's Guide* provide a brief introduction to the history of copyright as a legal concept, but this is not primarily a book of history or legal theory. Its strong suit is in its recognition of crucial details of Canadian copyright law that usually fall between the cracks in other accounts, particularly those penned in the United States. Major differences between Canadian and U.S. conceptions of copyright, such as the duration of the copyright term, the uncertainty about the status of parody as a protected activity, and moral rights all receive their due. Murray and Trosow also touch on a range of subjects that don't often appear in copyright books aimed at a general readership, such as Aboriginal notions of cultural property and the differences between the functioning of copyright and citation economies like the academy.

The book's major contribution to the development of fair copyright practices is its extensive discussion of users' rights. As Murray and Trosow observe, the notion of users' rights as a positive concept that supplants conservative formulations like "exception to infringement" is a recent and important addition to the discourse around intellectual property. What Murray and Trosow attempt to do is to present users' rights as a check against the powerful rhetoric of owners' rights mobilized by media conglomerates, allowing for the conception of copyright as "a system of relationships and interests" (74) rather than as a law and a series of limited defences against accusations of infringement.

Once their framework of relationships and interests is in place, Murray and Trosow devote the majority of the book to the diverse range of contemporary practices that invariably touch on the subject of copyright. Craft and design, digital

rights management and technical protection measures, educational uses, film and video, journalism, photocopying, music, photography, visual art and the Web, each receive their own chapter of discussion. The authors do make some aggressive claims for the scope of users' rights, such as affirming that Section 80(1) of the existing *Copyright Act* indicates that downloading music for private use does not constitute infringement if the music is copied to "an audio recording medium" for private use and not redistributed (158). Such claims will invariably enrage copyright maximalists of all political persuasions. However, Murray and Trosow's assertion of the importance of users' rights is not in the service of anything as banal as unbridled digital consumerism.

What makes the project of this book entirely laudable is that it imagines Canadian citizenship in a contemporary milieu as something that invariably involves active cultural production as well as consumption. People engaged in activities as diverse as the craft production of knitwear, making photocopies of journal articles, blogging or writing pornography about *Star Trek* characters all need to be aware of the ways in which concerns about copyright are imbricated into the fabric of their everyday lives.

In keeping with this model of the engaged, productive citizen, Murray and Trosow conclude with a series of policy recommendations. These include a call for a more robust, open-ended notion of fair dealing, strong limits on anti-circumvention clauses that restrict them to direct acts of infringement (as opposed to practices like reverse engineering, which often involve breaking technical protection measures), the abolition of Crown copyright, limits on statutory damage claims, limits on the waiver of moral rights, a *droit de suite* clause giving artists a small share of profits from subsequent sales of their work, clear procedures for handling copyrighted works whose creators cannot be located, sanctions for the misuse of copyright (notably, as a tool for "chilling" or dissuading people from fair use of copyrighted works), protection for Internet Service Providers from liability for the actions of their clients and maintenance of the current duration of Canadian copyright (the U.S. term is 20 years longer). Given that the items on this wish list are almost entirely absent from the text of Bill C-61, we may all have to be very engaged and very productive for the foreseeable future.