

Knowledge Policy for the 21st Century: A Legal Perspective

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EDITORS



Considerations for a 21st-century Knowledge Policy

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This book arose out of the Knowledge Policy for the 21st Century (KP 21) Conference that we organized in April 2007 at The University of Western Ontario Faculty of Law. The conference was a collaborative research exercise between our respective universities: The University of Western Ontario (UWO) and The Queensland University of Technology (QUT). The KP 21 Conference aimed to examine key copyright issues facing contemporary society. In doing so the conference was run over two days and focused on free and open source software on day one and copyright in the digital age on day two.

We owe thanks to all of the speakers: on the first day, “FLOSS as Democratic Principle,” in addition to the editors, Professor Brian Fitzgerald, QUT Faculty of Law, and Professor Mark Perry, the UWO Faculty of Law, we had Stacie LeGrow, Red Hat; Matt Norwood, Software Freedom Law Centre; Professor Peter Swire, Ohio State University; Richard Stallman, founder of the GNU Project and Free Software Foundation; and Joseph Potvin, Senior Economic Analyst, Enterprise Technology & Application Strategies, Chief Information Officer Branch, Treasury Board of Canada, Secretariat. On the second day, in addition to the editors, we had Peter Black, QUT Faculty of Law; Scott Kiel-Chisholm, Open Access to Knowledge (OAK) Law Project; Jason Shultz, Electronic Frontier Foundation; Professor Susy Frankel, Victoria University Wellington; Professor Sam Trosow, UWO Faculty of Law; David Moorman, SSHRC; Professor M.A. Wilkinson, UWO Faculty of Law; and Marcus Bornfreund, CC Canada. These conference contributors have either directly or indirectly contributed to this book. We thank our administrative and research teams that include

Michelle Bothwell, Tanya Butkovsky, Amy Barker, Nidhi Kanika Suri, Anju Sharma, and Alex Lacko—the latter two in particular have extended great efforts in going through the text several times. We also acknowledge our respective Law Schools and the Australian Research Council Centre of Excellence for Creative Industries and Innovation (CCi), and Jeffrey Miller, Alisa Posesorski, Dan Wiley, and Heather Raven of Irwin Law for sponsoring the conference and assisting with the publication of this book.

Undoubtedly this century started with a bang, at least from the perspective of the widespread adoption of information technologies and market hype for overvalued technology stock. There was a second bang shortly afterwards, when the bubble burst. We are now entering a period of greater stability for the appreciation of information technology in society, as well as sustained development, albeit in a financial environment that has become uncertain. In this collection of essays we address some of the issues that face our society in deciding how best to handle access to and monopolies over knowledge.

We begin this book with a chapter from Richard Stallman, who addresses the issue of free software, something he has been working on for over twenty-five years. This is a revised version of the transcript of the talk he gave during the KP 21 Conference. He addresses many of the issues surrounding the use of proprietary software, which he calls “just-trust-me” programs, and the four essential freedoms that a user should have. As a torchbearer to freedom in an IT-driven world, Richard has a voice that should be heard.

The following paper, from Nic Suzor and the editors, takes a look at the use of computer systems by government, and the steps the governments should take in order to make them more open and responsive to their acclaimed democratic aspirations. Here it is argued that free software gives governments greater return on their investments, not only from a financial perspective, but also in terms of the basis of the code that runs the computers that function for government operations. It takes the example of electronic voting systems, which leads us to the next chapter, “A Theory of Disclosure for Security and Competitive Reasons: Open Source, Proprietary Software, and Government Systems” by Peter Swire.

Joseph Potvin gives us a Canadian perspective on Free/Libre Open Works (FLOW), and introduces FLOW licensing models tailored for an intellectual resource community, as well as an experimental “proof of concept” project in the Canadian government administration. Matt Norwood then brings us an analysis of the United States Federal Communication Commission rules governing the use of free and open source software in

software-defined radio devices. He says the rules give mixed messages for developers and manufacturers. Brian Fitzgerald and Rami Olwan take a look at *Jacobsen v. Katzer*,¹ a landmark decision in the enforcement of Free/Libre Open Source Software (FLOSS) licensing. Marcus Bornfreund and Phil Surette show how the development of access tools, described in the paper, can practically aid usability of Canadian legislation.

Another theme addressed in this first part of the book concerns one of the key influences of this century—social networks that can be seen as an instance of the evolution of Web 2.0. We take a look at the world of blogs, starting with an introduction to the issues from Damien O'Brien with a review of some of the problems and challenges to law in the blogosphere. Emma Carroll and Jessica Coates look at the use of images online and the content licensing problems that can arise with such contributor-built interactive sites and issues of control of the materials uploaded. For Dilan Thampapillai the concept of the Google Digital Library offers a fascinating tension between the potential good of such a project, and the problems it inevitably faces under copyright.

The second part of the book addresses recent developments in copyright. Brian Fitzgerald and Benedict Atkinson take a look at *Copyright Agency Limited (CAL) v. New South Wales*,² a case that questions whether the owner of copyright material in a public register can charge the government each time the material is reproduced. Anthony Austin, Maree Heffernan, and Nikki David present some of the results of a survey on academic authors' perceptions of open access, copyright, online repositories and open access journals and publishing agreements. Samsung Shi and Brian Fitzgerald argue that the notion of the romantic author does not fit with the network world, but should rather recognize the cultural/collaborative nature of authorship. Margaret Ann Wilkinson analyzes the theoretical underpinnings to different approaches to open access and compares the dislocation in the international environment when examining the detail of copyright in Canada and the US. In the penultimate chapter, the editors, along with Anne Fitzgerald, Scott Kiel-Chisholm, Erin Driscoll, Dilan Thampapillai, and Jessica Coates aim to show that best-practice copyright management can lead to greater exploitation of the power of networked digital technologies. Finally Susy Frankel examines recent developments in a small-market economy, New Zealand, that has interests in common with both the devel-

1 535 F.3d 1373 (Fed. Cir. 2008).

2 [2008] HCA 35.

oped and the developing world, and has created an “own-interest approach” to digital copyright protection.

In this collection we have aimed at piercing through the shroud that obfuscates clear directions for societal management of knowledge in the coming years. These chapters can be seen as pinholes that may shed some light on the issues that are crucial for development in the next few decades. You will draw your own conclusions, but hopefully with more analysis of the challenges, more light will be thrown.

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The publication of Knowledge Policy in the 21st Century was delayed through no responsibility of the Editors or Contributors to this volume. The Publisher apologizes for the delay in bringing the book to press. However, we feel that the contents remain both timely and vital to our understanding of information management in both domestic and international contexts.