

Book review: Simon Stokes, 'Art and Copyright'

Article

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Book Review

- **Art and Copyright**
- **Simon Stokes**
- **Hart Publishing (2021)**
- **3rd edition**
- **9781509934256**
- **£49.50 (hb)**

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If we were to identify one metaphor that depicts artistic copyright, it would be the iconic fresco on the Sistine Chapel's ceiling, the Creation of Adam by Michelangelo, which visualises the breathing of life into Adam (the created) by God (the creator). Copyrighted works image their authors' creative touch and labour. However, the same metaphor also glosses over the existence of economic incentives behind copyright protection. Art is fascinating and intriguing but not necessarily the most lucrative area of intellectual property law for its practitioners. This assumption, however, is now being challenged by the rapid and ongoing progress in technology and the consequent impact of digitisation in the creation of art.

Simon Stokes, the author of *Art and Copyright*, informs us that copyright, 'the Cinderella of intellectual property law', has been neglected for years under the shadow of patents and trademarks. However, with the advent of digitisation, copyright has emerged into the spotlight because 'those seeking to protect and exploit their works in digitised or new media form and via the Internet increasingly need to rely on copyright.'

The third edition of *Art and Copyright* (2021) is an updated and revised version of the second edition from 2012 and aims to explore UK copyright protection afforded to artistic works. Its first edition, published in 2001, was a seminal text in the field of artistic copyright. In line with the influence of technology on art over the past two decades and due to the impact of EU law on UK copyright law (including the reverse effects of Brexit), the third edition includes additional coverage on the most cutting-edge topics of artistic copyright, such as AI-created works, blockchain, graffiti, new exceptions to copyright and art databases. In this third edition, the author explores the state of the art in copyright primarily from a practical aspect by also combining it with a scholarly approach because copyright, he insists, 'is too important a matter to be left to practitioners alone'.

The book is divided into nine chapters, including the introduction and the conclusion, and also contains an appendix for the use of practitioners. Chapter 2 provides a synopsis of the justifications for copyright and includes a very brief history of copyright. This part not only provides background information regarding the mainstream theories, such as utilitarian theory and personality theory, but also includes, for instance, a short paragraph on Marxist historians and creative communities under the title of Copyright Scepticism, which makes the chapter even more interesting. This introductory part serves as a good philosophical *terminus a quo* along with the help of additional scholarly writings to which the author has alluded.

Chapter 3 and Chapter 4 focus on the modern law of copyright and artists' moral rights, respectively, under UK copyright law by also referencing US and EU laws where necessary. Chapter 3 discusses the subsistence of copyright law, the merits of authorship/ownership issues and attendant economic rights. This part ends with two timely discussions, reviewing the interplay between designs and copyright and examining the rights that are analogous to copyright, such as database rights. Chapter 4, on the other hand, is dedicated to the author's moral rights and the artist's resale rights (*droit de suite*) by citing case law to illustrate how moral rights are implemented in the UK in practice. It also includes information on international developments, such as the US moral rights regime and the Resale Right Directive under the EU harmonisation agenda.

Chapters 5 and 6 serve as stepping stones towards an understanding of the effects of technology on art and explore such influence by touching upon various topics related to digitisation. Chapter 5 revolves around the main contentious themes, e.g., AI and computer-generated works, copying on the Internet, blockchain, database rights and copyright management. It thus provides a valuable resource to those who seek a concise digest concerning the copyright side of these groundbreaking technological phenomena. Similarly, Chapter 6, which is highly engaging and rich in content, examines a collection of current international issues and seminal cases both in the UK and at the international and EU levels. Some of these issues are peculiar to the artistic domain (e.g., copyright in photographs, orphan works, indigenous art, originality of works, freedom of panorama and the effects of Brexit on artistic works), whereas others reference contemporary issues and debates at the intersection of art and technology (e.g., the use of Internet visual search engines, image-sharing, user-generated works and online artistic collaboration).

Chapter 7 examines the practical aspects of core copyright issues and precedents related to artists, on the one hand, and museums, art galleries and publishers on the other hand. These issues range from the death of the artist and employee-created works to the fair dealing exception to copyright and royalties. The emphasis on technology and art that prevails throughout the entirety of the book also exists in this chapter, as it addresses social media platforms, online viewing rooms on galleries' websites, licensing agreements, open access principles and Creative Commons licences.

The final chapter, Chapter 8, investigates other intellectual property rights, namely breach of confidence, passing off and trademarks, and their interplay with copyright to elaborate on the consequences of a breach of an author's rights due to activities that fall outside the ambit of copyright. Along those same lines, the chapter briefly touches upon areas of law other than intellectual property law, such as domain names, privacy and freedom of expression.

In my view, the third edition of *Art and Copyright* is an invaluable resource not only for practitioners who intend to delve into investigating the building blocks of artistic copyright and the established precedents but also for academics, researchers and students who seek inspiration for their research, as the book also covers non-conventional forms of expression, such as bio-art and land art. Stokes keeps his promise of exploring the scope of copyright protection for artistic works under UK law by examining an impressive number of contemporary issues in copyright, even at the expense of being ambitious in effort at times. Yet, I believe this effort proves the very point of the book, arguing that copyright has now achieved a highly prominent central position due to the ubiquitous expansion of digitisation; because the number of new forms and means of technology keeps expanding, so does the widening scope of the book. In conclusion, Stokes has published a very timely piece that includes all the current issues in artistic copyright with a fascinating dedication to dissecting the effects of technology on artistic works. The third edition of *Art and Copyright* does not only meet the expectations of what a reader would want from a book of this title—it goes above and beyond.

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