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The Relationship Between Copyright and Contract Law: Editorial Remarks

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THE RELATIONSHIP BETWEEN COPYRIGHT AND CONTRACT LAW

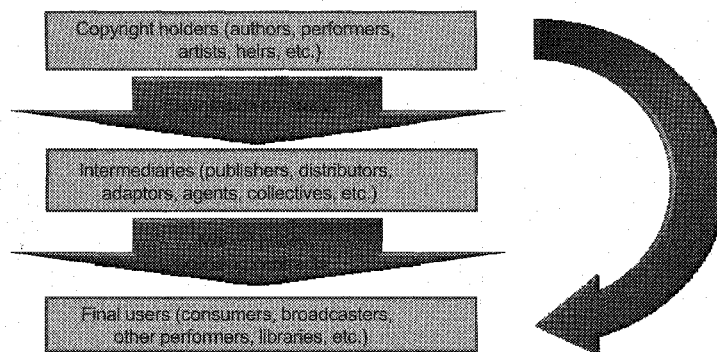
EDITORIAL REMARKS

*Martin Kretschmer**

This journal issue contains three articles based on a report commissioned by the UK Strategic Advisory Board for Intellectual Property Policy (SABIP).¹ The Board had identified “the relation of copyright and contract” as one of the priorities for research to support evidence-based policy.²

The chain of transactions governed by copyright contracts may be represented graphically as follows:

THE LOCATION OF COPYRIGHT CONTRACTS



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¹ SABIP was established in 2007 following a recommendation by an independent review of the UK intellectual property system (*Gowers Review of Intellectual Property* (HM Treasury 2006)). In 2010, SABIP was folded into the UK Intellectual Property Office's Economics, Research & Evidence (ERE) programme: <http://www.ipo.gov.uk/pro-ipresearch/ipresearch-policy/>.

² SABIP, *Strategic Priorities for Copyright*, March 2009. The six identified priorities were: Copyright & Creativity; Ownership Issues; Rights Management; Contract & Copyright; Simplification and Digital Consumer Attitudes & Behaviours. The document states (at 18) that SABIP “will examine the relative effects of copyright law, contract law and DRM/TPM technologies on incentives, distribution of financial rewards, and the protection of user freedoms.”

On the supply side, policy concerns include whether copyright law delivers the often stated aim of securing the financial independence of creators. Particularly acute are the complaints by both creators and producers that they fail to benefit from the exponential increase in the availability of copyright materials on the Internet.

On the demand side, the issue of copyright exceptions and their policy justification has become central. Are exceptions based on user needs or market failure? Do exceptions require financial compensation? Can exceptions be contracted out by licence agreements?

The review of the relationship between copyright and contract law was conducted by a consortium of academics from Bournemouth University (UK), University of Nottingham (UK), and Canterbury University (NZ). Supply and demand side issues related to copyright contracts were initially allocated in the following way. Richard Watt covered economic theory of contracts, value chains, and transaction costs. Martin Kretschmer reviewed the literature on creator and intermediaries contracts and artists' labour markets. Estelle Derclaye and Marcella Favale reviewed user contracts, with particular regard to the implications of digital rights management systems and jurisdictions that had legislated on the contractual status of copyright exceptions. The researchers took a comparative international approach, reviewing the evidence for the UK and several other countries. Rather than selecting a set number of jurisdictions, the consortium drew on different countries for different parts of the review. The aim was (i) to identify a comprehensive range of regulatory options, (ii) to survey the empirical evidence on their effects, and (iii) where none was available, to extrapolate predicted effects from theory and formulate a research agenda.

Having mapped out the areas to be covered, the authors drafted each Article independently, using their own disciplinary approach (economic, empirical, and doctrinal). Findings were then analysed and consolidated. The report was coordinated, and the synopsis drafted by Martin Kretschmer.³

³ The original report was triple blind peer reviewed. It remains available on the website of the UK Intellectual Property Office (<http://www.ipo.gov.uk/pro-ipresearch/ipresearch-right/ipresearch-right-copy.htm>) and at SSRN (<http://www.ssrn.com/>).