

Book Review: ‘The Making Available Right’

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Cite as Davenport, D, “Book Review: The Making Available Right”, European Journal of Law and Technology, Vol 11, No. 3, 2020

BOOK

Cheryl Foong, *The Making Available Right: Realising the Potential of Copyright’s Dissemination Function in the Digital Age*, 2019, Edward Elgar Publishing, 320pp, **ISBN** 9781788978170

REVIEW

Digital technology has rendered access to information more effortless than ever before. However, the accessibility, or restriction thereof, of that information remains a fundamental feature of copyright law, specifically the exclusive ability of copyright owners to make their content available to the public.

The predominant focus of copyright law and the development of the making available right has focused around broad judicial interpretations and expansive legislative development of those rights. This has been to adapt the restrictions of copyright law in an attempt to limit the potential freedom offered by digital technological advances so that copyright could remain relevant in the digital age. These two seemingly mutually opposed worlds are brought together within this text, providing an essential guidepost for how a sustainable balance between copyright and technology can be maintained in a digital world that continues to expand and govern the life of the individual.

This book provides a much-needed map to navigate this uncertain territory which can help to ease the uncertainty that will conceivably take place as society seeks to strike a balance between digital technology and copyright regulation to prevent either from taking on a life of their own. It brings sociolegal matters to the forefront and encourages users to think beyond the present and towards the future implications of legal barriers for the dissemination of information.

Foong offers a clear, in-depth, insightful, comprehensive, and comprehensible account of the conceptual difficulties associated with the legal regulation of digital technology. In doing so, the text addresses how the making available right has been interpreted in an expansionist manner by the courts to ensure new technology remains regulated by the law.

Yet, in spite of such trends, this book also offers an explanation that opens the door to a more emancipatory legal approach that demonstrates how otherwise current technologically-limiting interpretations of the making available right can be adapted to support technological innovation. This exploration remains remarkably lucid in what is an unprecedentedly uncertain area of digital copyright.

The author navigates the reader through intellectually challenging problem areas of the making available right such as judicial interpretations of both the 'act' and 'the public' in a way that is comprehensive without sacrificing nuance. Specifically, the analysis on how 'the public' is interpreted and the relevance of copyright markets in this assessment thereof makes clear the practical difficulties in attempting to balance the emancipatory potential of digital technology and the intrinsic desire for copyright to govern how that potential is used. Foong also uniquely incorporates academic, business, and political issues in a manner that skilfully recognises the historical development of copyright by not forgetting the initial basis of copyright. However, this is also includes analysis why these foundational aspects of copyright legal doctrine can benefit from adapting to the digital environment in the relevant social and economic context on a cohesive basis.

A text of this nature is essential given the commercial, economic, social, and technological relevance of information regulation and the extent that it is likely to play in the development of the modern world. It should therefore be no surprise that this matter has become a prominent issue in current political debates. This book attempts to provide a line in the digital sand that lies between legal regulation and digital technology and the problems associated with balancing both sides.

The fundamental tension of this debate concerns the protection of copyright material in the digital world, predominantly achieved by limiting or controlling access through legal regulation. In opposition, the making available right has attempted to regulate a technological environment which is inherently emancipatory by nature. Foong succinctly demonstrates why courts and legislators have conferred a broad interpretation of the making available right to ensure a high level of protection for copyright owners.

Yet, whilst acknowledging this, it does so against the theoretical and contextual framework underlying this legal doctrine and then provides a framework for such analysis. This approach enhances the substantive legal aspects of this book because the text does not just cover the current issues relating to the day-to-day functionality of copyright law in isolation. Instead, the historical analysis at the outset ensures a base level of clarity for the reader, which includes highlighting the potential for a conceptual framework for the future to aid the direction of this legal area.

Foong gives a broad approach that incorporates various intellectually challenging issues within this subject area. In doing so, it relates them to the wider-practical issue of dissemination and the role of the market to procure a more transparent and accessible system that is increasingly uncertain and intellectually complex. However, this book is uniquely relevant to a varied audience, ranging from not just those curious about the law governing these pertinent issues, but also practitioners, policymakers, regulators, computing/technology organisations, and academics alike.

Yet, this book uniquely provides an interlinkage between the practical and academic legal worlds that often fail to meet, but in a manner that provides a tool of navigation in the complex legal landscape that can be used equally by both groups. This book helps to merge both worlds, whereby explanations are technical enough to serve practitioners, but also, are sufficiently theoretically and conceptually broad to satisfy academics.

Ultimately, the analysis by Foong is an exemplification of a pivotal quality often overlooked in books of this nature, whereby it skilfully achieves both intellectual stimulation and practical accessibility. Therefore, it is a useful tool for anyone wishing to understand the inevitable problems created between a desire for legally-procured access control and advancing emancipatory technology and why society must draw clear legal boundaries in the digital world.

It is hoped that the views expressed here sufficiently summarise its contents and provide creative encouragement for future endeavours.