

COPIES IN COPYRIGHT

by J.H. Spoor et al.

The Netherlands: Sijthoff & Noordhoff, 1980
187 pp. \$37.50

DICTIONARY OF INDUSTRIAL PROPERTY

by Francis J. Kase

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Copies In Copyright is the fourth in a series of monograms published by Sijthoff & Noordhoff on the topic of Industrial Property and Copyright Law. The title of the book takes its name from the thesis by J.H. Spoor which comprises the major portion of the volume. It also contains two very short essays on British copyright law and American copyright law, respectively.

The work by Spoor is concerned principally with copyright law in Germany, France and The Netherlands. The reason for this focus is that the former two nations were the prime movers of the Berne Convention dealing with international copyright, while the latter - although a signatory of Berne - has a system of copyright law which is readily open to comparison to, and contrast from, that of Germany and France. While the value of such a discourse in a Canadian context is not readily apparent at first instance, its relevance emerges from the numerous references to the Berne Convention (of which Canada is a member) and from the many insights presented with respect to the European thinking on these matters. The latter factor takes on increased importance when one considers the dominant role played by European nations in the inception, and in the subsequent development, of the Berne Convention.

Spoor presents his thesis under three broad topic headings; namely, (a) reproduction (i.e. the process of reducing a work to fixation), (b) putting the "reproductions" into circulation, and (c) further distribution, and the use made of copies.

Under the first heading, the author traces statutory and academic developments in Germany from 1837 to date. He notes that several 19th century developments have retained their vitality in contemporary copyright law. He deals extensively with the author's right of production (including the protection of the right to enjoy the fruits of the exploitation of their work) in the 20th century and focuses especially on the problems created by the onslaught of home tape recorders and cheap, high-quality photocopies. In dealing with French law, it is noted that the rights of reproduction and of distribution are fused (i.e. not dichotomized as in Dutch and German law). Spoor further notes the French tendency towards pragmatism, which is in sharp contrast to the theoretical approach of German jurists. Finally, he discusses the concept of "reproduction" as it is dealt with by successive Berne conferences and he sets out a list of inter-related, but non-determinative, factors which help to ascertain whether or not one is confronted with a "reproduction". He concludes that although their histories vary, the modern-day law of Germany,

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France and The Netherlands are relatively in agreement with respect to the nature of copyright protection to be afforded to reproductions.

The section dealing with putting a reproduction into circulation is relatively short. Spoor discusses how and when, under German law, a work is *lawfully* "put into circulation", and the effect (and effectiveness) of circulation restrictions imposed by the author with respect to the scope (eg. price, channels of distribution, etc.), content (eg. number and characteristics), and territory involved in the right to distribution being relinquished by the author. He again notes that the French law, by "synthesizing" the reproduction right with the distribution right, raises significant difficulties when an author imposes restrictions on distribution alone.

The third segment of Spoor's monogram opens with several introductory remarks concerning the Public Lending Right (PLR) and the use of phonograph records in broadcasting. The author advocates a PLR system, but acknowledges the practical - especially the administrative - difficulties involved. He notes that records are often protected by performing rights organizations and goes on to deal with rights which limit the use of reproductions and the manners in which "authors" can be properly compensated. After briefly reviewing the statute and case law in Germany, France, The Netherlands and Belgium, Spoor embarks on a lengthy discourse on the so-called "extensive doctrine of the right of reproduction" (i.e. the author has a say with respect to *all* uses of his work, eg. second-hand sales, library and other lending, private reproductions, etc.) and he points out the various pros, cons, and practical difficulties involved. This section concludes with Spoor's PLR proposal. Basically, the proposal involves having certain copies specified, and specially marked, as "lending copies". These copies would be sold at a government-set surcharge (200%) which would be distributed, probably ratably, among the authors. This scheme is seen as having the potential to adequately compensate the author for lost sales resulting from the availability of their works through free libraries, etc.

In his conclusion, Spoor discusses the dichotomy between authors' rights with respect to the making and the distribution of copies on the one hand, and their "performance" rights on the other hand. He notes that copyright law - for practical reasons - focuses more on the first respect than on the latter. He expresses the opinion that the author is entitled to *reasonable* compensation for *both* types of rights, and that users (eg. broadcasters) should be prepared to pay a *reasonable* price for the requisite authorizations. In closing he notes the discrepancy, in practice, between an author's rights and his ability to *enforce* those rights (especially with respect to private reproductions using home tape recorders and photocopy machines), but he does not view it as a significant problem.

The essay concerning British copyright law presents a brief overview along with a more detailed focus on authors' rights with respect to reproduction and distribution. It also touches on the 1979 *Public Lending Right Act* passed by the British Parliament.

The essay dealing with American copyright law basically outlines the improvements the 1976 statute made over the 1909 Act. It follows the same general format as Spoor's monogram.

In short, *Copies In Copyright* is a thorough academic exercise in comparative law. It espouses many fresh ideas with respect to many old problems in copyright, particularly on an international scale. The Canadian practitioner will not find it especially useful, but the academic and the law reformer should consider it as a valuable tool for use in shaping the future of Canadian copyright law.

The *Dictionary of Industrial Property* may be viewed as something of a companion to *Copies In Copyright*, although the title is gross misnomer. The volume does not, in fact, contain definitions of terms used in the field of industrial property. It is based in English and it enables one to find the equivalent term in Spanish, French and German. The latter three languages are indexed and cross-referenced according to the numeral assigned to the English equivalent. The volume would be very helpful to someone intimately familiar with the terminology of industrial and intellectual property, but it has very limited utility otherwise.