

Layout legislations and Traditional Knowledge. Another important direction in which the book could have proceeded or acknowledged is empirical research in negative spaces. It is relevant, if not more, to study the absence of IP law in industries (which continue to thrive from a creative standpoint) as much as it is in presence of IP law.

For those interested in looking for a starting point on how to conduct empirical research, Hazucha, Silby & McKenna Zimmerman and Caenegem's contributions are crucial because they invest a sizeable number of words in the ground realities of empirical research, probably the reason behind its slow progress. Wang's contribution would be immensely helpful if they would be looking for some guidance on critically analysing case law databases. Some other chapters will make very interesting reading materials for law students as the curriculum globally appreciates the need to take a step ahead from teaching just substantive literature of what the law ought to be to what the law actually is. Examples include Hudson's

discussion of fair use *v* fair dealing and Fhima's take on non-traditional trade marks as they tell you what the reality of law enforcement is.

For someone looking for a literature review of prior empirical work, Deepporter's contribution is a good starting point. The book has added data tables and graphs, which contribute to its intriguing exploration of the intersection between IP law and economics, particularly in the initial chapters. As a result, this book is suitable for readers engaged in study in this field, thus expanding its relevance to a broader audience. It makes a valuable and relevant addition by exploring the enormous possibilities of these intriguing methods. This timely book caters to anyone with an interest in learning IP law, offering something to everyone.

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The intricate interplay between copyright law and technology

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A New Framework for Intermediary Liability: Copyright, Causation and Control on the Internet

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The issue of intermediary liability for copyright infringement has become critically important in modern times, garnering significant attention from academics, practitioners and lawmakers worldwide. The heated discussion about the optimum level and forms of regulating online copyright infringements at a global level is a topic of much debate in specialized journals, book chapters and monographs. 'A New Framework for Intermediary Liability: Copyright, Causation and Control on the Internet', a monograph written by Dr Kylie Pappalardo from Queensland University of Technology, represents a significant contribution to this ongoing debate. This

book stands out for its thorough analysis and innovative approach, making it essential reading for copyright scholars, researchers, judges, lawyers and policymakers alike. It presents a carefully constructed framework for determining intermediary liability in copyright infringement cases, proving to be a valuable resource for both legal practice and policy development.

This comprehensive treatise skilfully addresses the complex and often muddled realm of intermediary liability law. It delves into the legal complexities of internet intermediaries' responsibilities concerning copyright infringement. On the one hand, Pappalardo critiques the courts' and legislatures' fundamental misconceptions that link an intermediary's own liability to capacity or efficiency rather than fault. She highlights the inadequacy of the binary distinction between 'passive' and 'active' intermediaries and subjective measures such as 'knowledge' and 'intent', which fail to provide a clear and definite basis for determining intermediary copyright liability. On the other hand, Pappalardo introduces a detailed causation framework to determine intermediary copyright liability, drawing inspiration from negligence law's emphasis on personal responsibility and the principle of causation. This framework uses the principle of causation to determine when internet intermediaries should be obligated to act to prevent infringement and employs the concept of reasonableness to define the extent of this duty. The author suggests that analysing negligence law not only

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provides a necessary framework to assess when internet intermediaries should be held liable for third-party copyright infringements, but also considers the broader impact of intermediary liability on a wider range of actors than typically contemplated in legal discussions. What distinguishes this book is its thorough research into legal traditions and longstanding legal principles regarding causality and fault from a comparative legal standpoint. It presents various examples and case law analyses mostly from distinct common law systems, including Australia, Canada, the USA and the UK. Interestingly, the author lists copyright law of two EU Member States and EU copyright directives as ‘applicable copyright law’, while there is little discussion in the book of EU legislation and case law regarding intermediary copyright liability. Additionally, it incorporates comparable laws and academic discussions, offering a much-needed global perspective on this worldwide issue.

To begin with, the central question of the book is ‘when should a copyright intermediary be liable for the actions of its users?’ The principal argument of this book is that intermediaries should only be under a duty to take reasonable steps to prevent acts of primary infringement where they have causally contributed to the risk of infringement or where they have real and actual control over the primary infringers and their actions. The book is thoughtfully organized into eight comprehensive chapters, each delving into the multifaceted aspects of intermediary copyright liability.

The initial chapters of the book establish a foundation, elucidating the complexities of current legal frameworks and their often-inconsistent application across various jurisdictions. In the introduction, the author outlines the scope and central arguments of the book, provides a succinct overview of the applicable copyright laws in different regions, highlights the major issues in the existing incoherent intermediary copyright law and stresses the significance of user theory in discussions and case law pertaining to intermediary copyright liability. Following this, Chapter 2 sets the groundwork for Pappalardo’s innovative framework, aimed at clarifying and streamlining the responsibilities of intermediaries in copyright infringement scenarios. This chapter introduces the fundamental responsibility theory and delineates its role within tort law, drawing on both legal and philosophical literature.

Chapters 3, 4 and 5 form the crux of Pappalardo’s argument in this book. Chapter 3 challenges the traditional dichotomy of ‘active’ and ‘passive’ intermediaries and delves into tort law’s focus on causation and relational responsibility across various jurisdictions. By integrating tortious principles of causal relevance into the

law of intermediary copyright liability, the author illustrates practical applications of these principles to a selection of copyright intermediaries. A causation framework is proposed, establishing a threshold test to determine when an intermediary’s technology or service contributes to the risk of copyright infringement. Consequently, intermediaries are categorized into two groups: ‘misfeasance’ intermediaries that do casually contribute to copyright infringement, and ‘nonfeasance’ intermediaries that do not. The former’s causal role necessitates a duty to act to minimize the risk of copyright infringement, while the latter are only subject to a similar duty if they maintain a special relationship of control over third-party infringers.

Chapter 4 investigates when an intermediary might be held liable for its failure to control primary infringers, following a tort-based approach to control. The author scrutinizes cases involving control within negligence law and concludes that a duty to control may be imposed where the defendant and the third party are in a special relationship of control of a kind recognized by law and where the defendant’s control over the third party is significant enough to reasonably warrant such a duty. Moreover, in tort law, a defendant is only responsible for a third party’s actions where they have ‘real and actual control’ over the person causing the harm and it is reasonable to impose a duty to control. However, the ‘real and actual control’ test proposed by the author seems to be highly abstract and might introduce additional complexities for adjudicators in terms of interpretation and application in practice. Applying the control model to copyright intermediary, the author further posits that it will be rare for a nonfeasance copyright intermediary to exert sufficient control over primary infringers to be held liable for copyright infringement.

Chapter 5 explores the scope of that responsibility and articulates what intermediaries ought to do to fulfil their obligations under law. Pappalardo addresses the negligence calculus in the context of intermediaries’ duty to minimize infringement risk and balances the economic implications of imposing such duties against the backdrop of proportionality and fairness. The test under tort law is whether a reasonable person would have taken precautions against the risk of harm, and reasonableness will determine what those precautions should have been in the circumstances. By drawing to various tort law cases, the author details the test for breach of duty of care and proposes factors that courts need to assess and balance, namely the probability of harm eventuating and its likely seriousness, the burden on the defendant of taking precautions and the social utility of the harm-creating activity. It is noteworthy that Pappalardo

incorporates users' interest into the test for breach in negligence, particularly the 'social utility' test, allowing courts to consider the social impact of the intermediary's technology or service more fully on furthering user's interests in autonomy, self-expression, connection, education and play. While certain factors, notably 'social utility', are intrinsically abstract and vague, the author offers comprehensive lists of references to guide their practical application, thereby mitigating legal ambiguity to a certain extent. Pappalardo then adapts the negligence-based fault analysis to the copyright context, reevaluating a selection of well-known intermediary copyright cases to determine if they would be considered at fault for third-party copyright infringements.

After examining duty and breach, the author discusses another crucial tortious element, namely damage, in Chapter 6. The author emphasizes that copyright harm must be addressed seriously and fairly, especially the harm that the intermediary has purportedly caused to the copyright owner should be named and evidenced. Meanwhile, mere allegations of harm should not be sufficient to ground an action. However, the author acknowledges that copyright harm is a complex and abstract concept that needs further development and articulation, and thus only proposes introducing proportionality in awards of damages. Chapter 7 examines how industry codes of practice for combatting online infringement might impact upon finding of intermediary, focusing on the doctrine of specific reliance. Finally, the book culminates in Chapter 8, which consolidates the insights and findings presented throughout.

Overall, a significant strength of the book lies in its structured methodology that incorporates long-standing principles in tort law. The theoretical underpinnings of negligence-based intermediary copyright liability may serve as an innovative and effective tool to

offer clarity and direction for distinguishing the boundaries of intermediary copyright liability. While Pappalardo's innovative framework is academically rigorous, its application might pose challenges in diverse legal environments and different internet contexts. Although the author favours standards to provide more clarity and certainty than rules, those standards, being flexible and adaptable, might incur higher interpretive and application costs. Moreover, legal standard's flexibility can lead to more tailored outcomes, yet may also risk reduced predictability and consistency. Therefore, striking a balance between theoretical solidity and practical feasibility is crucial, especially in the dynamic realm of digital technology. This approach necessitates meticulous interpretation and in-depth analysis to ensure it neither hampers innovation nor places excessive burdens on stakeholders.

In conclusion, this book adeptly navigates the intricate interplay between copyright law and technology, offering a fresh perspective on how legal frameworks can adapt to the evolving digital environment. It not only diagnoses the current problems in intermediary liability law but also offers a thought-provoking framework that could influence future legal trends in the digital realm. Therefore, 'A New Framework For Intermediary Liability: Copyright, Causation and Control on the Internet' stands out for its highly relevance, particularly in prompting reader to consider how copyright law can be seamlessly adapted to the new technological contexts and reflect how to recalibrate different rights and interests in light of evolving values and changing circumstances. It is hoped that future editions of the book will expand their scope to include more on regulatory developments pertaining to intermediary liability at the EU level.

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