BOOK REVIEW

INTELLECTUAL PROPERTY:
THE MANY FACES OF THE PUBLIC DOMAIN

By Charlotte Waelde and Hector MacQueen (editors),

The importance of the public domain has always been recognised but, since the millennium, actual research in this area has been a growing field. The main thrust of early research was focused on an American and legal perspective of the public domain. Therefore, works such as that of Waelde & MacQueen are of particular importance.

This collection of works brings together sixteen chapters written by European researchers and practitioners (mainly from the UK). By collating works showing differing perspectives and interests that lie in the public domain it hopes to describe, analyse and demonstrate the value of the public domain. This book reflects the historical, rights-based, treaty-based, economic and creative perspectives and shows the public interest in, and limitations of, the public domain. In addition to this, the book shows examples of the public domain in traditional knowledge, public sector information and scientific information.

From the latter part of the last paragraph, it is obvious that this 260-page book is going to represent a challenge to the reader. This is not a beginner's book. It is a book for the knowledgeable reader who understands that differences in style and perspective enrich and enhance the value of a work.

Since this work adopts a non-US perspective, there is no focus on the US constitutional, copyright or free speech legislation that has tended to be ubiquitous and remains a dominant figure in the study of the public domain. *Intellectual Property: The Many Faces of The Public Domain* (hereafter *Many Faces*) naturally recognises the American dominance in this field, but strives to deliver a non-US perspective. This effort alone makes the collection a valuable contribution to the field. In particular, there is the recognition early in the work that there is no such thing as a single public domain: each writer needs to construct and explain the public domain in his or her own words.

Naturally it is impossible to give an extensive commentary on the whole collection in a brief review, but there are some points which this reviewer feels the need to share: those important "aha" moments which may occur when reading a well-written work.

In his chapter, F. Willem Grosheide takes a historical view of the roots of the public domain, book piracy and copyright – showing that the roots of what today controls the public domain and most of our digital technology developed in order to establish an equitable balance between authors and publishers in a pre-digital environment. His learned historical survey shows that a social clash was one of the sparks that led to the institution of copyright

> *…society was divided into various personal circles (such as the nobility, commoners, the* p*atronised) and professional circles (such as the clergy, legal profession, guilds), all of them building and sharing their specific knowledge, keeping it secret from the outside world… This fractal information monopoly, however, has no legal corollary: writers did not have property rights in their products.*

Retelling the story of the development of copyright is important to those who have not heard it before. To those of us who have read of this development as a clash between the haves and have-nots, this chapter makes an interesting argument.

Grosheide's chapter is followed by a more concrete and de-limited argument where Roman Deazley demonstrates the limits of the public domain as created by copyright. This is not one of the social or cultural domains. It is, instead, a specific domain which lawyers may feel more comfortable with. But do not think that Deazley is mechanically describing something: his chapter is alive with analysis and questions the very limitations he describes.

Chapter 3, by John Cahir, is tantalisingly entitled "The public domain: right or liberty?" The question mark at the end ensures that the reader needs to think about what the public domain can be. The chapter focuses on the use (or abuses) of Digital Rights Management technology and its effects on the public domain. This chapter invites the reader into the debate and might result in many scribbles in the margins where the reader can only argue for or against the author's agenda.

The next chapter is Antony Taubman's "The public domain and international intellectual property law treaties". This title seems almost misleading since the chapter is more of a philosophical search for the basis of the public domain or rather (as the author admits) the many faces of this domain. It is not before the end of the chapter that the author describes the way in which international treaties shape the public domain. It is Taubman's hope that: "…a positive feedback loop between private exclusivities and public domains, with the effect of producing fundamental public goods that transcend the legal infrastructure, defined by particular texts and the specific rights and entitlements that they provide for."

In a brief chapter, Gillian Davies argues that the public interest in the public domain (which is also the name of the chapter) shifts over time and that efforts to safeguard and control the public domain suffer form these shifts in the public interest. Despite this, Davies argues that there is a need to protect this important aspect of our societies. Naturally this creates a complex challenge for anyone attempting to do so.

This is followed by chapter 6, which dovetails nicely into the previous argument. Fiona Macmillan's chapter "Altering the contours of the public domain" recognises the shifts in public interest and the complex relationships between intellectual property and the public domain, while arguing for the importance of the public domain. Once again, the question becomes one of finding an equitable balance and making the shifting limitations of the public domain suit our modern needs.

John Howkins explores the connections between creativity and intellectual property and asks a series of important questions on the purpose of creating and protecting intellectual property in today's technological environment. He sees the solution as the correct balance between access, use and the right to be rewarded for work and investments.

Tony Bainton explores the public domain from the point of view of the librarian. He begins chapter eight by drawing people's attention away from any aged misconceptions about the role of the librarian, "The librarian's mission is to help people find the information they need". Copyright and regulation of the public domain are creating serious hindrances in the everyday work of the librarian. In this chapter, threats to the ability to archive and retrieve core elements of our culture are discussed.

In chapter nine, Bill Thompson discusses the dangers of limiting the public domain in relation to the role of the writer today. He draws from several practical examples where the limits of copyright and the public domain have been tested and, in his view, been found to be lacking. He argues for more than a limited commons where sharing is a voluntary act. Writers, and in extension culture, needs a thriving public domain. Bill Thompson's familiarity with popular culture, writing style and clarity in hammering home his argument make this chapter a valuable addition to this work and help make it more accessible to a wider audience.

Manfredi M. A. La Manna uses a specific case study to explore "the relationship between the public domain and scholarly and scientific communication". In his chapter, he moves the discussions of the importance of the public domain squarely into the open access discussion. La Manna's chapter is important in that it demonstrates yet another problematic aspect of copyright, even though it may be argued that he loses the focus on the public domain on the way.

Richard Susskind deals with the relationship between the public domain and public sector information. This is a topic of great interest following the implementation of the Freedom of Information Act in the UK. After setting out the basics, Susskind develops a critique of the way in which the government has enacted policies for the use of public sector information.

In chapter twelve, Johanna Gibson demonstrates that intellectual property frameworks and the public domain have been inadequate when it comes to ensuring the viable protection, access to and use of traditional knowledge. Somewhere in the process of applying intellectual property regimes on traditional knowledge, the context and control of the information is lost. In some cases this can result in indigenous people losing valuable cultural assets.

Helen Wallace and Sue Mayer discuss the concept of patentability and its role in controlling research agendas. This is a fascinating and important subject on its own but it was difficult, in the chapter, to see the connection to the public domain.

In chapter fourteen, Ann Bruce explores the balance between ideology and interest in the way in which decisions about GM crops are taken. In her chapter, the public domain is more a place for public discourse between various groups. The chapter is interesting and exciting but, once again, the idea of the public domain is made fuzzy by defining that concept too widely. This is not the public domain encountered in earlier chapters. Naturally, however, the public domain and public discourse are interconnected.

Graham Dutfield conducts a thought experiment and imagines a world without intellectual property rights. After a brief comment on copyright, his focus turns to patents and argues that patents are not indispensable and that a rights-free world is a workable alternative. The purpose of imagining a rights-free world is to better establish an equitable balance of the rights we have today.

In the closing, sixteenth chapter, Charlotte Waelde reviews the contributions made to the volume and attempts to map a road ahead and to see a way in which we can develop both the subject and its equitable regulation.

To sum up, any edited book is difficult to complete. Different writers' ideas and styles are mixed and carefully edited into a complete product. This book is filled with fascinating voices and perspectives on the public domain that will ensure that any reader will be challenged and forced to think (and possibly argue) with a dedicated group of thinkers. At times the book suffers from the authors' discussion of the public domain from too wide a perspective and, occasionally, the public domain is lost in the arguments. Nevertheless, this book remains an important and learned collection that should be read by a large group of people. It is therefore unfortunate that the editors have not chosen a more accessible method of communicating its contents. This is not because of the academic style or the content, but largely because of the high cost. Considering the topic of the book, it is interesting that it has not been released in more accessible forms. The high price and the lack of online presence are barriers that will prevent many readers from accessing an important book on the public domain.

Mathias Klang
Researcher and senior lecturer at the IT-University, University of Göteborg
Göteborg, Sweden