

Book Note: What's Wrong With Copying?, by Abraham Drassinower

James A. Hayes

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>

Book Note



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

Citation Information

Hayes, James A.. "Book Note: What's Wrong With Copying?, by Abraham Drassinower." *Osgoode Hall Law Journal* 53.3 (2016) : 1101-1103.

<http://digitalcommons.osgoode.yorku.ca/ohlj/vol53/iss3/12>

This Book Note is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

Book Note: What's Wrong With Copying?, by Abraham Drassinower

Abstract

“IN THE WORLD OF COPYRIGHT, an author is no sovereign despot in an inverted world of commodities. She is rather a citizen among others in the great Republic of Letters.”² Abraham Drassinower thus concludes *What's Wrong With Copying?* with an eloquent expression of its thesis. In this provocative book, Drassinower critiques fundamental copyright theory and posits a move to an inclusive philosophy that compensates for increasingly blurred lines between authors and publics. Drassinower argues for the construction of authors as speakers, works of authorship as instances of communication, audiences as interlocutors, and the public domain as a set of conditions underlying the equity of authors and users.³ Drassinower attempts to treat copyright on its own terms, championing a rights-based vision of copyright substantiated across six chapters.

Book Note

***What's Wrong With Copying?*, by Abraham Drassinower¹**

JAMES A. HAYES

"IN THE WORLD OF COPYRIGHT, an author is no sovereign despot in an inverted world of commodities. She is rather a citizen among others in the great Republic of Letters."² Abraham Drassinower thus concludes *What's Wrong With Copying?* with an eloquent expression of its thesis. In this provocative book, Drassinower critiques fundamental copyright theory and posits a move to an inclusive philosophy that compensates for increasingly blurred lines between authors and publics.

Drassinower argues for the construction of authors as speakers, works of authorship as instances of communication, audiences as interlocutors, and the public domain as a set of conditions underlying the equity of authors and users.³ Drassinower attempts to treat copyright on its own terms, championing a rights-based vision of copyright substantiated across six chapters.

In chapter one, Drassinower examines a jurisprudential trend away from a standard of originality that emphasizes authors' diligence to one that instead favours a work's creativity. He argues that the creativity standard cannot be sustained through a focus on the production of value. Works requiring significant diligence could have great value but minimal creativity. The transition to the

-
1. (Cambridge: Harvard University Press, 2015) 272 pages.
 2. *Ibid* at 226.
 3. *Ibid* at ix.

creativity standard therefore requires an alternative conception of copyright—a conception of copyright as speech.⁴

Chapter two proposes that a better metaphor to guide copyright interpretation is “dialogue” between authors and publics rather than the “balance” of authorial incentives and the public interest.⁵ The chapter renders “fair use” and the public domain as conditions of the audience’s entitlement to participate in an ongoing conversation by, for example, criticizing a work or citing it as part of an academic exercise.⁶

Chapter three tackles the status of unauthorized use in the absence of authorship. Drassinower proposes that infringement requires re-communication. Mere “ink on a page,”⁷ he argues, is not the purview of copyright law. To employ a copy for personal purposes is therefore not a question of using the work fairly or in a way that infringes. Personal use is “*nonuse*.”⁸

What is it about speaking in one’s own words that entitles the speaker to prevent others from repeating them? The prevailing attitude is that entitlement flows from authors’ right to protect their investment of time and effort. Chapter four suggests that infringement is instead a wrong to the author’s autonomy as a speaking being.⁹ “Copyright infringement,” Drassinower writes, “is ventriloquism practiced on an unwilling subject.”¹⁰

Chapter five addresses the counterargument that an instrumentalist account of copyright is superior because it provides a stronger foundation for the public domain. Drassinower responds thusly: that an instrumentalist view of the public domain is unstable because it is posited as a contingent calculation of its efficiency, and that rights-based thinking is superior because it advances the public domain as a matter of inherent dignity.¹¹

The book’s final chapter locates copyright within a broader system of rights, asking if plaintiffs’ claims are superseded by defendants’ freedom of expression.¹² Examining miscellaneous exceptions to copyright, Drassinower proposes that the only “exceptions properly so-called”¹³ arise where the investigation of the

4. *Ibid* at 23.

5. *Ibid* at 55.

6. *Ibid* at 78.

7. *Ibid* at 94.

8. *Ibid* at 87 [emphasis in the original].

9. *Ibid* at 113.

10. *Ibid*.

11. *Ibid* at 177-186.

12. *Ibid* at 191.

13. *Ibid* at 201.

jurisprudential system requires that an author's copyright give way in certain circumstances to an interest or principle other than authorship.

Throughout *What's Wrong With Copying?*, Drassinower voices concern about the common idea that copying is legally or morally wrongful. Such a view, he argues, "chafes against the palpitations of a digital world."¹⁴ The problem is deeper: learning proceeds through copying. Culture is predicated on copying.¹⁵ The implications of copyright expansion are therefore enormous. Drassinower is not sceptical; he believes in the importance of copyright. Drassinower is not idealistic; his critique is grounded in practicality. Copyright, he argues, is a relationship that includes both the right of the author to speak and the right of the audience to use those words to inform further dialogue.

14. *Ibid* at 1.

15. *Ibid*.