

Book Notes: Rethinking Copyright: History, Theory, Language, by Ronan Deazley

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RETHINKING COPYRIGHT: HISTORY, THEORY, LANGUAGE,
BY RONAN DEAZLEY. NORTHAMPTON, MA: EDWARD
ELGAR PUBLISHING, 2006. Pp. xiv + 224. Table of cases, table of
legislation, references, index. \$95.00 cloth.

BY ROBIN SENZILET

In this thought-provoking book, Ronan Deazley traces the historical and theoretical underpinnings of copyright law. Chapter one commences with a discussion of the first copyright statute, the *Statute of Anne*,¹ which brought a temporary sense of security to the booksellers of London through its statutory protection period. The eventual expiry of this statutory protection prompted a “battle of the booksellers,” a string of cases in which the main issue was the existence (or lack thereof) of copyright at common law. This chapter provides a detailed account of these cases including the seminal decision in *Donaldson v. Beckett*,² which the author argues was inaccurately portrayed in subsequent legal writing. In chapters two and three, Deazley describes the opinions of the nineteenth-century treatise writers regarding various copyright cases. He argues that erroneous accounts of *Donaldson* found in those treatise

¹ (*The Statute of Anne*) *An Act for the Encouragement of Learning by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned*, 1709 (U.K.), 8 Anne, c.19.

² (1774) 4 Burr 2408 [*Donaldson*].

writings have created a myth that authors held a perpetual copyright at common law.

It is against this historical backdrop that Deazley presents his two main theories. Chapter four considers the nature of copyright through the lens of the elusive “public domain,” a concept whose meaning has proven difficult to pin down. He argues that the challenges associated with capturing a definition for the “public domain” may be instructive regarding copyright theory more generally. In chapter five, Deazley states that the existence of copyright at common law was traditionally considered through the lens of property theory. He suggests that a new language be adopted so that copyright can also be contemplated in terms of freedoms and privileges. Deazley further advocates that copyright policy should continue to develop under the presumption that any new privileges granted by the statute must be justified, since they will correspondingly limit currently existing freedoms.

Deazley concludes his book by acknowledging the power that legal writing will continue to exert upon the development of copyright law. He suggests that the relative importance of copyright decisions will continue to be dictated not only by developments in the law, but also by the treatise writers’ decisions regarding which cases they choose to discuss, and how those cases are presented by them.