

## **BOOK REVIEW**

Boatema Boateng, *The Copyright Thing Doesn't Work Here: Adinkra and Kente Cloth and Intellectual Property in Ghana*. 217 pp. University of Minnesota Press, 2011.

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In this book, Boatema Boateng explores the debate around the treatment of some forms of cultural production as intellectual property. Boateng, in her exploration into the failure, in her view, of intellectual property law to protect cultural property, focuses on *kente* and *adinkra* cloth. *Kente* and *adinkra* are handmade by the Ewe and Asante peoples in Ghana and are protected under Ghana's intellectual property legislation, primarily under copyright. She writes of the symbolic, cultural, and social meaning this cloth carries for the Asante in particular and for Ghana in general. She was inspired by the production of imitations outside of Ghana and by the more general efforts by African countries to put in place an international treaty to enshrine protection for folklore generally.

Boateng's book has a clear structure; a general introduction is followed by five chapters, a conclusion, acknowledgments, notes, bibliography, and an index.

Boateng's larger purpose is to explore the "wide but interrelated range of legal, political, economic, cultural and social issues" that relate to the "uneasy fit between folklore and intellectual property law" (p. 2). She does so by considering three questions: First, what are the differing principles of authorship and alienability in the production of *adinkra* and *kente* and in intellectual property law, and what happens when these two systems meet? Second, what kinds of legal subjects are brought into being in the encounter? Third, what kinds of appropriation practices are found around *adinkra* and *kente*, on what kinds of claims are they based, and what implications do they have for Ghana's copyright protection of folklore? (p. 2). Clearly these questions are closely related. Interestingly, Boateng's argument goes beyond the conventional limits of intellectual property discourse, putting into question the utility of intellectual property law in the protection of cultural property and folklore generally. She suggests that "alternate spaces" must be brought into play to bring about desired protection, stating that "my hope is that they [associated spaces] can lead us to options for managing cultural pro-

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duction that undermine the hegemony and, indeed, the relevance of ‘the copyright thing’”(p. 33).

Boateng gives the reader an enlightened discussion of *kente* and *adinkra*, the varied accounts of their origin, and of the at times differing national and local perceptions of where the intellectual property rights should reside. Their origin, whether indigenous to the Asante people or, as some have claimed, as long-ago imports from beyond what is now Ghana, a view which implies that Asante origin is a construct, is perhaps only of historical interest. As for perceptions of intellectual property rights, some producers hold that they should reside with the *Asantehene*, the Asante Chief or King, representing the Asante people (p. 130). According to Boateng, the palace has made no such official claim and cooperates with the national government in its treatment of folklore under Ghana’s copyright law as national heritage. Ghanaians generally take the view that they, unlike foreigners, should have unfettered access to *kente* and *adinkra*, with no obligation to pay royalties to the state (p. 131–132).

Boateng highlights the relationship between appropriation and globalization, stating that globalization has opened up countries and markets and helped to increase the visibility of and demand for *adinkra* and *kente* cloth (pp. 119–120). According to Boateng, the cloth is increasingly important to Africans in the diaspora who see it as a link to their continent of origin (pp. 133–137). Some African Americans, who represent a large fraction of the world market, believe incorrectly that it is the machine-made fabric, not the handmade, that is authentic. Some continental Africans also accept imitations of these cloths (p. 138). Boateng points to globalization as the major culprit. Globalization has increased visibility and demand. The demand is such that it cannot be met by authentic, handmade, production. Outside of Ghana, there has been growing appropriation of *kente* and *adinkra* designs. Other African countries and particularly China produce machine-made imitations of what traditionally is a handmade fabric. More recently, Ghana, too, has begun to produce machine-made *kente* and *adinkra*. Nevertheless, authentic handmade *kente* has high status, unlike imitations, and plays a role in Ghanaian society that the imitations do not. But it is Asia that is the main source of factory-printed imitations. Boateng therefore makes the point that the appropriation of Ghanaian intellectual property, in the form of *kente* and *adinkra*, is very much linked to Ghana’s relative weakness in the global market.

By so situating the problem of intellectual property protection for cultural artefacts, Boateng goes beyond rarified legalistic or academic discourse. It is a welcome reminder that lives and livelihoods are in question. It also presents an opportunity for her to explore critical differences between a perspective based on intellectual property law and one based on the experience of producers. The differences are particularly significant with regard to authorship, time, authorization, and the commons.

Boateng admirably explains how authorship in the production of *kente* and *adinkra* differs from that understood in intellectual property law. The former is essen-

tially communal, and is so even if the design originates with an individual, although his or her contribution by designing and naming the design is not forgotten (p. 40). One cannot comprehend traditional cultural production without accepting the distinction between it and individual production.

With respect to time, intellectual property law makes a clear distinction between authors who are living and those who are dead by giving a limited protected period for an author's work (p. 42). However, traditional cultural production, exemplified by *kente* and *adinkra*, makes no such distinction between deceased and living authors.

Authorship and authorization with regard to *kente* and *adinkra*, and globally for traditional cultural artefacts, are based on their belonging to a tradition begun by ancestors and continued by association with particular institutions and practices.

Boateng's exploration of the commons illuminates a further distinction between concepts of traditional cultural production, as exemplified by *kente* and *adinkra*, as opposed to those of intellectual property law. The commons has certain characteristics that have received little attention but which have defining importance: namely, the existence and nature of boundaries around them. Boateng's examples of Ghanaians having to pay fees to learn the craft of *kente* or *adinkra* cloth making importantly signify that the knowledge and transmission of this craft is not an unregulated one (pp. 56–59). Boateng observes that the commons, with regard to the production of *kente* and *adinkra*, is not formless: "Rather than dismissing *adinkra* and *kente* production as belonging within an undifferentiated commons of traditional knowledge, such production must be understood as a distinct commons of cultural production with specific rules of entry and access . . . the commons of *adinkra* and *kente* production needs to be understood as a sphere of creativity with multiple outer boundaries that are managed by cloth makers" (p. 60).

Using the UNESCO/WIPO (World Intellectual Property Organization) Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Forms of Prejudicial Action of 1982<sup>1</sup> under the UN system as a starting point, Ghana and other countries have sought to protect folklore under intellectual property law. Ghana's postindependence intellectual property legislation is designed specifically to protect *kente* and *adinkra* designs as folklore. However, according to Boateng, this has proven to be ineffective. She states that a nation's power and ability to influence decision and policy making internationally is largely determined by its economic or political strength (chap. 5), and that past episodes of domestic political instability and economic weakness brought on by policies of the International Monetary Fund (IMF) and of the World Bank are responsible (pp. 150–151).

More specifically, she attributes the failure to a shift in international intellectual property policy in which WIPO and UNESCO have been eclipsed by the World Trade Organization (WTO), with trade and intellectual property converging under the WTO/TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement. She points out that TRIPS enforcement applies only to products recognized

under TRIPS. While industrialized countries have managed to include “nontraditional” intellectual property products, such as computer software, for protection under intellectual property laws and TRIPS, they have shut the door on Third World and indigenous peoples’ cultural products (p. 155). Ultimately, according to Boateng, intellectual property protection is a matter of economic and political strength and bargaining power (pp. 154–158). She points to China’s rise in economic strength and how this has led to an interesting South–South or South–East dimension to the matter of intellectual property protection for Ghana.

The reader is left with a bleak picture of the magnitude of the task Ghana faces in its bid to secure international protection for its *kente* and *adinkra* cloths. However, Boateng notes that all is not lost and makes specific recommendations.

What is the way forward for countries like Ghana which are not dominant on the international stage? Boateng suggests that countries work collectively. In practical terms, she proposes that Ghana’s best option to further its interests is to place them on the agenda of Third World nations acting in regional or other groups. She also suggests that Ghana frame the issue of folklore protection more explicitly as a trade issue as opposed to a cultural heritage issue (p. 158). With respect to China, Ghana should consider bilateral trade agreements (p. 158). The Ghana government should also align itself with folklore producers (p. 163). More interesting, she also states that a “transnational network of commons-based cultural production that, unlike intellectual property law, recognizes and supports the complex structures of authorship, authorization, and alienability within which they work” is required (p. 182).

Boateng notes that some commentators have argued that, in view of perceptions of inferiority with regard to *traditional*, *indigenous*, and related terms that exist in intellectual property discourse, using intellectual property law to protect indigenous and local cultural production might be ceding “the ground to the epistemologists of the dominant framework.” These commentators suggest a radical rethink of concepts such as *authorship* and *alienability*, taking into account “non-Western principles that privilege community above the individual and custodianship over ownership” (p. 14). Boateng rejects this view, arguing that “countries like Ghana are already implicated in the larger framework of modernity of which intellectual property law forms a part. Therefore, the task of unthinking the law’s dominant concepts of authorship and alienability of culture cannot be undertaken in isolation from that of unthinking European and North American colonization and imperialism in all their guises and present-day manifestations” (p. 14).

This book stands out as one of the few on copyright in Ghana and, likely, as the only one that tackles this topic from the perspective of copyright in *kente* and *adinkra* cloth and intellectual property in Ghana.<sup>2</sup> Boateng’s work is therefore a welcome addition to the body of scholarship and to the debate on protecting cultural production as intellectual property. It falls within various fields such as African history, folklore, culture, appropriation, intellectual property law, society, ethnicity, economics, globalization, and politics. Although earlier versions of some

of the chapters in this book have already been published, the expansion on earlier versions and addition of new chapters and material that discuss changes and developments in this area make this book an invaluable resource. The book is well researched, and the extensive interviews Boateng conducted with Ghanaian producers of these two cloths and with Ghanaian government officials give this book a strong social context. Throughout, she demonstrates a comprehensive knowledge of the subject and communicates this knowledge interestingly and effectively.

Boateng has written a strong work on cultural production and copyright in Ghana. She is currently an associate professor of communication at the University of California, San Diego, and has already published in this area. The book benefits from Boateng's active involvement as evidenced by her use of "I" throughout the discussion and by references to personal observations based on her interviews and other groundwork. Her work is not an end point; rather, it gives one a good grasp of the topic, while the endnotes and index point readers in directions they can follow to further extend their inquiry. It is an impressive work, clearly situating the topic within the context of Ghanaian society, thus taking it from the abstract to the practical. The stories, the map of Ghana, and the illustrations and pictures of *kente* cloth and *adinkra* symbols help readability. The book is comprehensive and addresses a wide range of issues, notably the importance of *kente* and *adinkra* cloths and the local and global dimensions of the problems Ghana faces in protecting these cloths as intellectual property that are essential to the discussion.

It is likely that the book will reappear in subsequent editions and perhaps become recognized as necessary reading for those concerned with cultural property protection. One might therefore suggest amendments for future editions.

Appropriation is necessarily a central concept in Boateng's work, and the term appears early in the text (first in the introduction) and throughout the book. In chapter 4, it is defined as "taking something that can be claimed by, or proved to belong to, someone else" and that chapter also discusses Ziff and Rao's important work on cultural appropriation. Boateng mentions Ghanaian use of *adinkra* symbols in jewelry and other noncloth media as examples of appropriation. It would have been helpful to the reader if the term had been defined at its first appearance, and if its use in jewelry and other nontraditional media as examples of appropriation were fully explained.

It would also have been helpful if Boateng had cited the sections of Ghana's intellectual property legislation, especially its copyright law, that she discusses.

With respect to *adinkra* and *kente*, Boateng suggests that their complexity is such that their protection cannot be accommodated under only one category of intellectual property law. She points to Ghana's recent geographical indications law as one promising avenue. One would wish, however, that she provide us with further substantive suggestions of changes that might usefully be made to Ghana's copyright and intellectual property law.

Boateng's book is a timely contribution to the ongoing debate on protecting some aspects of culture as intellectual property. Students and scholars of intellec-

tual property law, culture, and history will find this a useful reference tool. It will also be useful to Ghanaians and those in the African Diaspora who are curious to learn about the origins of *kente* and *adinkra* cloth, as well as about issues surrounding authenticity and appropriation. For those interested in a clear picture of the historical, economic, legal, internal, and global challenges that Ghana and its *adinkra* and *kente* producers face in the protection of *kente* and *adinkra* as intellectual property, this book must be added to their reading list. While the book focuses on Ghana, the lessons learned and the problems experienced are not unique to Ghana. Scholars from other African and non-African countries will also find it useful. Those who, while not necessarily trained in law, are concerned with cultural property protection and law, whether government officials, legislators, or policy makers, would find it illuminating and a source of insight on related issues. Boateng states: “My goal so far has been to show that if the copyright thing doesn’t work with respect to *adinkra* and *kente*, it is because of problems with both intellectual property law and the way that Ghana has chosen to apply it to traditional knowledge” (p. 166). To a large extent she has met her goal, and I recommend this book to anyone interested in this and related topics.

## ENDNOTES

1. As Boateng states in endnote 32 of the Introduction, these Model Provisions were eventually published in 1985.
2. Andrew Ofoe Amegatcher’s *Ghanaian Law of Copyright* (Accra, Ghana: Omega Law Publishers, 1993) touched briefly on the protection of folklore in Ghana.