

There is something here for everybody; moreover, the arguments advanced are overwhelmingly of a uniformly high standard, carefully constructed and well-expressed. Graham Bradfield, for example, nicely takes apart the problems raised by modern corporate structures in connection with sister-ship arrest, at the same time analysing his native South Africa's unique and progressive approach to them. Australia's Kate Lewins discusses another issue that has spawned a number of approaches, namely, the problem of how many bites at the cherry a maritime claimant can have and how far he can arrest one or more ships repeatedly in respect of the same claim. From fellow Australians Anton Trichardt and Justice Rares (the latter of whom manages to act as a magnet for large numbers of interesting antipodean Admiralty cases) we have discussion of jurisdiction in a wide sense: in the one case the possibility of arresting in one place and suing – or arbitrating – somewhere else, and in the other a close look at the cases where an arresting court can actually refuse to hear the substantive claim. From the home base of Singapore, Paul Myburgh casts a quizzical eye over the private international law side of arrest, particularly but not exclusively the *Halcyon Isle / Sam Hawk* problem of claims such as bunker bills giving maritime liens in one place but not elsewhere, and calls – your reviewer suspects quixotically – for some kind of international unification. The excellent Belinda Ang, from the Singapore bench, deals professionally and straightforwardly with another post-1952 problem: namely, how the automatic security provided against an insolvent defendant's creditors by arrest at common law can and should be reconciled with the newer tendency to universalism in insolvency law and the UNCITRAL Model Law on the subject. Toh Sing and Nathaniel Lin, also from Singapore, discuss liability for wrongful arrest, concluding – contrarily, but in this writer's view correctly – that the restrictive view in *The Alkyon* [2018] EWCA Civ 2760 is indeed justifiable. The substantive work is rounded off by Michael Tsimplis on arrest for environmental sins, and a plea from Rhidian Thomas to make arrest more difficult, or at least allow the court a discretion to deny it to footing or undeserving claimants. In the final chapter, "The Future of Ship Arrest", Martin Davies winds up with a suggestion that much of the law of arrest as we know it is here to stay. This may be the mark of a brave man. On at least one view arrest may well be in decline, on the basis that insurers and P&I interests now handle a good many traditional in rem claims, for instance, collision or cargo claims, leaving arrests largely practised by mortgagees, bunker suppliers and charterparty claimants. But the answer to this we will have to see.

In short, this is an extremely worthwhile book. It is thoroughly recommended to any shipping lawyer, especially a parochial English one, who wishes to broaden their knowledge while sharing a highly enjoyable read, and to any comparative lawyer wishing to expand their knowledge of an otherwise esoteric branch of the law. Buy it while you can. Then tell your library to do likewise.

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*Performers' Rights in Sri Lanka*. By GOWRI NANAYAKKARA. [Singapore: Palgrave Macmillan, 2019. ix + 228 pp. Hardback €114.39. ISBN 978-981-13-6667-3.]

Gowri Nanayakkara's book joins a select group of monographs dedicated exclusively to performers' rights: Lord Justice Richard Arnold's *Performers' Rights*, 5th ed. (London 2015) and Owen Morgan's *International Performers' Rights*

(Oxford 2002). Nanayakkara's contribution is unique, however, in that it presents a socio-legal, as well as post-colonial, account of performers' rights. By drawing on interviews with local singers and industry and government representatives, as well as on documentation surrounding international treaties, Nanayakkara offers a sensitive account of the geopolitical circumstances surrounding the introduction in 2012 of performers' rights in Sri Lanka. Nanayakkara's key contribution lies, first, in offering a case study of the universal condition of performers through a local lens and, second, in providing insight into the repercussions of colonial transplants of the British copyright regime. In addition, as a contributor to a field that is still in its infancy, Nanayakkara's book offers a first engagement with the relationship of foundational theories of intellectual property and their (poor) application to performers' rights, and a first historical overview of the international performers' rights regime.

Nanayakkara does this in seven chapters. In Chapter 1, the author critically revisits some foundational theories of intellectual property that are often considered to justify copyrights: Locke's natural right theory, economic incentive theory and personality theory. When drawn upon to justify performers' rights, the author does not find any of these particularly fitting. Regarding Locke's natural right theory, Nanayakkara argues that it creates unsatisfactory explanations for the abstract nature of intellectual products and even more so when these are live performances. When it comes to the economic incentive theory, the author concludes that the theory does not function as a foundational theory because the market discussed in the context of this theory is one created artificially to justify the theory. Regarding the personality theory, the author believes that it is best drawn upon to justify moral rights, not economic rights. Nanayakkara's larger point is that these theories, commonly used to validate copyrights, are less successful when applied to performers' rights. Considering that this is not the book's central concern, this first observation lays the ground for further and much-needed engagement with the philosophical foundations of performers' rights.

Chapters 3 and 4 largely focus on the international performers' rights regime, walking the reader through the political context surrounding the Rome Convention, the Agreement on Trade-Related Aspects of Intellectual Properties (TRIPS), World Intellectual Property Organization's Performers' and Phonogram Producers' Treaty (WPPT) and the Beijing Treaty, recounting each of the performers' gains (and also disappointments). Nanayakkara importantly draws on some of the travaux and debates of the time, making these chapters a compelling read and an important first reference for someone seeking a chronological overview. The overview could have been further enriched by creating a dialogue with the few existing accounts in this area. These may be narrower in scope but offer richer descriptions of the political environments surrounding the reform processes they attend to (e.g. Rasmus Fleischer, "Protecting the Musicians and/or the Record Industry? On the History of 'Neighbouring Rights' and the Role of Fascist Italy" (2015) 5(3) *Queen Mary Journal of Intellectual Property* 327). However, as it is, the overview provides plenty of background for the author's main focus on the introduction of performers' rights in Sri Lanka.

From Chapter 5 onwards, Nanayakkara's account gains momentum, focusing on the central argument introduced in Chapter 2. This is that the performers' rights regime, as implemented in Sri Lanka, does not address the local singers' twofold concerns. These are, first, a sense of belonging of the songs they sing – even though not authored – and, second, a need to achieve economic security.

There are two distinct but interlinked reasons for this. First, a socio-historical one. With India being the largest neighbouring economy, it is reasonable to suspect that

contemporary Sinhala music is strongly influenced by Indian culture. But it is the colonial British-led music industry that appears to have had the greatest impact on the contemporary music's claims to national identity and some of its now most enduring practices. By supporting predominantly Indian genres and encouraging the distribution of Indian cover songs in local languages during the colonial period, the British rule unwittingly left a legacy of rejection amongst the Sinhalese towards the practice of covering songs. It is this legacy that frames the context of this genre in post-colonial times.

The second, financial, reason is more practical. Throughout the book the reader learns from first-hand accounts that, in effect, singers commission their songs from authors without any money crossing the transaction. Indeed, Nanayakkara painstakingly avoids the word "commissioning" because the relationship between singer and composer is interpreted as more personal than commercial. It involves mutual trust and respect, which is reflected in the singer seeking out a specific composer, and the composer going out of their way to compose a song for that particular singer. But once the singer has the song and has secured a recording contract with it, the singer assigns all of her rights to the record company. The singer may still get some royalties for sales, but apparently not for other uses such as synchronisation in film, TV and ringtones.

As Nanayakkara explains, there are no representative bodies, such as unions or collective management organisations. Singers thus witness how their songs make it to the mainstream without them profiting directly from their success. Their real income comes from their live performances. And here lies the crux of the problem. If record labels decide to bring in a new singer to cover that same song, the original singer is effectively side-lined, losing precious opportunities to perform. Because it is their main or only source of income, this can represent a significant financial setback for the singer. Hence the singers' strong sense of belonging of their songs and the concern that the newly introduced performers' rights regime does little to assuage their financial concerns.

Nanayakkara's first key contribution thus lies in offering a clear example of unequal conditions faced by performers around the world, consistently exploited by powerful corporations for greater profit. This point needs to be made again and again, especially as Nanayakkara's proposals to address these problems are proposals that performers and policy-makers have been grappling with for decades and that have not yet materialised even in the most long-established music industries. Strengthening contractual relations and offering an alternative dispute resolution mechanism, as the author proposes in Chapter 7, remain sources of debate even at European level. This is currently the case in negotiations surrounding the Copyright Directive introduced in 2019 and to be adopted by member states by 2021. Crucially, these proposals hinge on the great divide in bargaining power experienced by creators in all the music industries around the globe.

Could Nanayakkara's story therefore be reduced to one fixated on imbalances of bargaining power? Very narrowly, if singers felt that they had more bargaining power, could they ask for an exclusivity clause in relation to their song? As Nanayakkara explains in her comparative analysis, this is already common practice in India, where singers are given five years before the record label will give the same song to another singer. More broadly, why do composers not exercise their bargaining power? Why are they side-lined in economic considerations? Indeed, might it make strategic sense for performers to find ways to remunerate composers and so join forces in negotiations with record labels? Yes, except there are fundamental differences between the struggles of performers in long-

established music industries such as the UK's, say, and those of performers in Sri Lanka.

This brings me to Nanayakkara's second key contribution: her significant addition to a growing collection of studies on colonial transplants of copyright regimes (e.g. Michael Birnhack, *Colonial Copyright: Intellectual Property in Mandate Palestine* (Oxford 2012)). As Nanayakkara explains, it was under the British rule of Sri Lanka that the first national copyright act was introduced. With the introduction of the law came the already established British record industry, which brought with it recording technology and the know-how and channels – also linked to the Empire – to promote and distribute records. Singers wishing international acclaim have been undiscerning about the contractual arrangements they have entered into and have been content to hear their voices becoming ubiquitous. As Nanayakkara suggests, many performers still sign unfavourable contracts, whilst some fail to sign anything at all. This may give singers momentary success and opportunities to perform, but as a result they assign to the record labels their rights to exploit their recorded performances for the length of term, often beyond the singers' own lives. Nanayakkara's story shows how external commercial practices that have developed elsewhere in tandem with workers' protective measures such as unions and collective management organisations, have, in this case, been introduced into the country without any safeguards for the local workers.

This calculated exploitation, made possible through colonial power, has extended beyond the colonial rule. It has reached well into current times until 2012, when, long after independence from Britain, Sri Lanka finally introduced performers' rights into its copyright framework. As Nanayakkara demonstrates, based on key historical documents and interviews, Sri Lankan legislators are made aware of the singers' concerns and these are seriously debated in the process leading to reform. But considering Sri Lanka's weakened place in the international geopolitical regime, Sri Lankan legislators did not feel they could deviate from international rules, in particular from trade rules. Sri Lankan singers therefore did not receive any protection in relation to the industry's practice of covering songs or, for that matter, a direct mechanism to reap financial rewards from the exploitation of their performed songs. With a record industry relying on international practices, Sri Lankan local creators continue to be weakened long beyond the direct British rule. In short, imbalances of bargaining power are most definitely at the heart of the Sinhala singers' and creators' problems, just as they are elsewhere. However, as Nanayakkara illustrates, in Sri Lanka these have been amplified through geopolitical imbalances that have led to the disruption of traditional practices through the imposition of external commercial regimes.

Based on her doctoral thesis, the manuscript may have benefited from significant reworking to consolidate its constituent parts and so elicit her contribution more decisively. This is partly an editorial issue, which is the more salient when considered alongside occasional stylistic oddities. But this does not diminish her book, nor the fact that she is first in putting crucial content surrounding the international performers' rights regime on the table for debate.

All in all, Nanayakkara's ambitious account is vivid and imaginative in its detail, illuminating in its wide purview, and provocative and thought-provoking in its normative line of questioning. It significantly adds to the study of performers' rights as a whole by bringing untapped territory to the debate whilst offering an insightful case study of the implementation of the international performers' rights regime in one country – Sri Lanka – with all the complexities faced by musicians worldwide when confronted with powerful corporations. And in so doing, she also provides the

basis for a more thoughtful consideration of colonial transplants in the realm of copyright and, specifically, performers' rights.

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*Privacy's Blueprint: The Battle to Control the Design of New Technologies.* By WOODROW HARTZOG. [Cambridge, MA: Harvard University Press, 2018. x + 366 pp. Hardback £28.95. ISBN 978-06-74976-00-9.]

This book introduces some systematic analysis and a new perspective on privacy by design, a concept first formulated by Dr. Ann Cavoukian, the former Information and Privacy Commissioner for the Canadian province of Ontario. Broadly, privacy by design suggests that privacy ought to be deliberately considered and proactively included as a consideration in the design of all goods and services. With the dramatic growth of technologies capable of eroding our privacy, privacy by design has emerged as a way to reign in the privacy-abusive aspects of new technologies. Hartzog's central assertion in the book is that privacy by design should be mandated and regulated by legislators.

The author first highlights the importance of design generally, though the book limits its analysis to popular consumer-facing digital products and services. Design is the "actual function, structure, and appearance of consumer-facing technologies" (p. 199). Design is "both important and difficult", but it "reflects and protects values", and the notion of "design neutrality" is therefore anathema, much as the notions of "technology neutrality" or "gun neutrality" might be. Design is politically charged, and therefore ought not to be ignored.

*Privacy's Blueprint*, the book's title, is the author's name for a design agenda for privacy law and policy that includes three parts: values, boundaries and tools. First, the author discusses the values protected by privacy by design. Next, he seeks to articulate "basic boundaries to further those values" (p. 94). And finally, he lays out specific legal tools to enforce those values.

The author seeks to identify the privacy values that are affected by design and ought to be nurtured by design, ultimately settling on three specific values: trust, obscurity and autonomy. These, we are told, foster other values like "dignity, identity, freedom, equality, and free speech", as well as "control, intimacy . . . fairness, self-realization" (p. 119). Trust is composed of "discretion, honesty, protection, and loyalty" (p. 99). Obscurity, by contrast, is "the lack of any one of four factors: search visibility, unprotected access, identification, and clarity" (p. 112). Autonomy "is a near limitless concept", but the author asserts that "autonomy is furthered as a design value when privacy law guides technologies to use signals and transaction costs to reinforce trust and obscurity" (p. 117). Each of these values is broken down, explained and illustrated by example.

The book then sets out the "boundaries for design". This is where the author makes his most meaningful suggestion, namely that product safety and consumer protection laws are models that can inform the regulation of privacy by design. The author writes that "the main boundaries for privacy law's design agenda should focus on deception, abuse, and danger" (p. 134). There follows an interesting discussion of various privacy scams and abuses, from impersonation of Google cars, to flashlight apps that collect geolocation data, persuasion profiling and more.