

## Book Reviews

### LAW AND LITERATURE

*Fiction and the Law: Legal Discourse in Victorian and Modernist Literature*, by Kieran Dolin. Cambridge: Cambridge University Press, 1999. Pp.234, £35.00 (hb), ISBN 0 521 623322 4.

Kieran Dolin might be surprised to find his book reviewed in a periodical called *Entertainment Law*. Yet the burgeoning discipline of 'Law and Literature' merits a place in a critical journal devoted to the intersection of ideas about law and culture. The novels here examined were written for, amongst other things, entertainment, and Dolin's methodology, particularly his emphasis on the historical and ideological context of his chosen texts (politics as well as jurisprudence), provides an excellent transferable model for other studies of law and culture such as film or theatre. In any case, this is an excellent book which deserves notice, and I urge you to read it.

'Law and literature' embraces a broad field of scholarship. Initially confined to the examination of legal representations in literature and the application of techniques of literary analysis to legal writing, in the hands of feminists and critical legal scholars it acquired a more political character which challenged the hegemonic certainties of both disciplines. While many proponents urged the value of reading literature to find alternative readings of justice to traditional legal viewpoints, for others this project was not radical enough: literature, they claimed, by its broad appeal and cultural force, could act to critique and destabilise law and play an important part in the project of reform. That it played such a role in the past is clearly demonstrated by Dolin, whose six novels are selected from the pivotal century which encompassed the rise of the industrial West and the expansion of empire or, in literary terms, Victorian Romanticism and early twentieth-century Modernism. Dolin approaches his subject from the perspective of a legally-trained lecturer in English: his 'decision to quit law for literary studies' (vi) was shared by several of the authors whose work he discusses. This means his book eschews the reverence often manifested by lawyers talking about 'great works of literature' and the uncritical respect shown by some literary scholars towards law. The study begins with a description of the influence of legal ideas on the structure and content of the nineteenth-century novel – 'an evidentiary model of narration, a plot concerned with the commission and rectification of crime and civil wrong, and the adoption of a critical tone with respect to official agencies of law' (2) – and an account of the intellectual and social history of European law which gave rise to the modern Western *nomos* or normative world view. Dolin's conclusion that 'the history of the emerging idea of the supremacy of law becomes the fundamental narrative of the modern *nomos*' (35) means that, in his view, the relationship between law and literature is dialectical: not only does literature describe legal and alternative world views, but 'law itself can structure those literary representations' (3).

Blackstone's confidence in the wisdom and evolving perfection of English common law continued to dominate Victorian legal rhetoric, especially in relation to colonised societies, where it was imposed in an effort to spread 'order' and 'civilisation' across the Empire. But this traditional conception came under attack in the nineteenth century from both advocates of natural human rights, inspired by

revolutionary movements in America and France, and utilitarians such as Bentham who wanted to codify the law according to rational principles. Both camps relied on universalist notions of law, which were in turn critiqued by the dominant artistic spirit of the age, Romanticism, with its emphasis on the importance of *individual* experience. For the Romantic, every person had his or her story to tell and it often ran counter to institutional versions.

Personal experiences of social injustice therefore became a major source for Victorian plots. Dolin shows how many nineteenth-century novelists drew their inspiration from the new vogue of 'True Crime' stories, leading to a reading public's fascination with trials. These are fundamental to his chosen texts, as is society's developing interest in the 'sympathetic criminal' in literature, influenced by and in turn influencing new trends in psychology and criminology.

The novels selected by Dolin for detailed examination are all canonical texts, each bringing with it a considerable body of literary criticism, and some, such as Dickens's *Bleak House*, a body of law and literature scholarship as well, which Dolin draws on and himself critiques. In the earliest work discussed, Scott's *The Heart of Midlothian*, he shows how 'the authority of pure legalism' (69) is destabilised by the different narrative modes the novelist uses, which permit the telling of stories not admitted by the legal process. Dickens' *Bleak House* is located in the new tradition of reformist 'novels with a purpose'. His attack on the workings of equity, once signifying justice but by his time 'a by-word for injustice and as bound by precedent as the Common Law it was designed to supplement' (78), still has its echoes today, a century and a half later! Trollope's *Orley Farm* is notable for its portrayal of the legal profession, a portrayal rejected by some legal commentators because of procedural 'inaccuracies' in the story. Dolin defends these 'errors' on artistic grounds, pointing out that such criticisms 'are symptomatic of a larger failure to recognise novelistic conventions when they conflict with legal expectations' (103). In other words, fiction tells a different kind of truth from law.

For some critics, Melville's *Billy Budd* marks the transition from natural law to legal positivism as the dominant legal theory of nineteenth-century America. Simultaneously, legal education became separated from general culture. While law continued to supply ideas for novels, the legal and the literary approach became, and remain, 'distinct and mutually uncomprehending fields' (124). But, as Dolin shows, the trial in *Billy Budd* represents more than simply the triumph of legal formalism; it shows how strict adherence to the letter of the law can be presented as neutral and fair but actually act in the service of a political goal, the preservation of social order. This justification, explained as 'law's overriding purpose' (127), represents for Dolin the death of Enlightenment ideals and the victory of violence – a victory seemingly unchallenged today.

Conrad's *Lord Jim* and Forster's *A Passage to India* examine the workings of English law across the imperial seas. *Lord Jim* concerns a 'sympathetic criminal', a man who is more than his crime. The effect of the novel's telling of his story is to unsettle the reader's preconceptions and certainties about right and wrong and the 'justice' of law. In *Lord Jim* and, even more, in *A Passage to India*, indigenous societies are seen as having their own cultures and laws, but what Conrad seems to value in law-making remains in 'a normative tradition that presumes to define itself exclusively as civilised and progressive' (164).

Forster, however, is more critical of both British rule and Western rationalism. He shows how the much-vaunted 'English freedom' means 'freedom for the Englishman but not for the subject peoples of his Empire' (176). In juxtaposing the Indian

viewpoint and English claims, he demonstrates not only the validity of the former but sometimes its greater morality, particularly when the clash of cultural expectations forces difficult moral choices. In its trial scene, *A Passage to India* leaves uncertain whether the achievement of the 'right result' signifies 'a vindication of the rule of [English] law' (183) – or not.

With its deft interweaving of literary, legal and historical materials, and thoughtful insights on every page, *Fiction and the Law* is a book which wears its scholarship lightly. It is very well written – certainly more accessible than many works in the field – and the one criticism I would make is that Dolin gives very little attention to gender issues. Indeed, the only error I noted was the date for the granting of the vote to British women on equal terms with men – 1928, not 1930 as stated (30). It is a tiny point, but symptomatic of a wider disregard for the concerns of women in academic scholarship generally.

The six novels discussed in *Fiction and the Law*, each a tale of individuals caught up in the legal net, offer 'an alternative forum' to the legal trial, 'a second normative space' in which authors could explore the limits and authority of Anglo-American law, and also incorporate those elements excluded from law: 'the inadmissible, the scandalous, the heterodox' (194). Dolin's literary examples therefore offer clear, detailed pictures of the workings of law at the time of writing, but also of their shortcomings, of alternatives and possibilities. If any rationale for the study of law and literature be needed, it lies in Dolin's demonstration that 'such novels force a re-examination of the very mythology of liberty and legality' (200) – a re-examination as necessary in the twenty-first century as it was in the nineteenth.

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## PROBLEMS AND SOLUTIONS FOR THE CONTROL OF DOPING

*Drugs and Doping in Sport: Socio-Legal Perspectives*, edited by John O'Leary.  
 London: Cavendish, 2001. Pp.288, £38.50 (pb), ISBN 1 85941 662 4.

Doping and the use of performance-enhancing drugs have long been considered to be anathema to participation in sport. The drugs in question are supposed to pose serious health problems to the users and those who use them are denounced by their sport for undermining the ideal of fair play and the very essence of sporting competition. Yet despite this, doping has remained an integral part of sporting competition from the earliest times. This book explores the phenomenon of doping and attempts to locate it in the context of legal disputes and social and legal theory.

As an edited collection of essays, the book draws on an impressive array of practising and academic lawyers and sports practitioners and administrators from both the UK and overseas. Each provides a specialist perspective on doping, identifying the problems and providing separate solutions in ways that are subtly yet significantly different. As the editor himself points out in his final chapter, this makes finding the ideal solution to the problem of doping a complex one as, 'the complexity arises because ... there is no consensus as to the nature of the problem, so it might appear there cannot be a consensus as to the solution' (255).

That there is no consensus is hardly surprising considering the number of interest groups that are trying to influence decision and policy-making on this issue. Almost all of these groups are represented here in some form, each concentrating on the particular issues that affect it most. Thus, there are chapters analysing the rights of athletes, the problems of sample-taking, the ethics of sport, the development of sports policy and alternative dispute resolution to name but a few. All come to the same basic conclusion that the present system is not ideal and requires some change. The difference is in the degree of change required and the reasons why such changes should be implemented. On this, there is very little agreement. The views expressed here encompass everything from upholding the current position on strict liability to relaxing the rules to allow for doping in controlled circumstances.

Part of the problem here is that some of the essays are rather too descriptive, concentrating on what the current position actually is at the expense of explaining why it is that way and why the proposals for change should be either encouraged or discounted as appropriate. Others simply regurgitate the often-stated position that doping is cheating instead of backing up such statements with any recourse to logic or theory. The editor himself recognises some of these points in his final chapter. However, it may have been useful for others to have responded to such claims in more detail.

That aside, there are some interesting and enlightening discussions raised throughout this work. Chapters on the unnecessary control of recreational drugs, the pitfalls associated with the current trend for the harmonisation of doping procedures and policies, the potential development of a criminal jurisprudence, and the lessons to be learned from the US and its compulsory doping procedures in amateur sports are particularly topical. Each raises the spectre of further legal intervention, especially in the field of human rights and privacy. They also show that almost every proposed reform of this area has already been tried, to a greater or lesser extent, in some other field, whether related to sport or not. It must also be assumed that these attempts have failed as doping is still considered to be a major threat to sports around the world.

The notion of the rights of athletes is returned to on a number of occasions. This is likely to increase in importance in the future for a number of reasons. Athletes want their rights at hearings to be acknowledged and upheld and are increasingly willing to go to court to see these upheld, particularly so where natural justice and due process are concerned. They are also seeking to challenge the basis of sample-taking by claiming that it is an invasion of their privacy. Finally, it is an issue that governing bodies and international federations must take seriously if they wish to use the more invasive techniques associated with blood and DNA testing. Without a greater knowledge of these issues, the law will only get more actively involved in the future. The one main chapter lacking here is a philosophical contribution. What are the ethics of sport? More especially what are the various contested interpretations of sports ethics? It is easy to say that the use of doping techniques is cheating and undermines fair play and should be punished; however it still continues and on a large scale. Some deeper discussion of these theories would have made an interesting contrast to some of the more dogmatic statements made by some contributors.

This could have been enhanced further by a different coordination of the chapters. The most theoretical chapter, 'The Discourses of Doping: Law and Regulation in the War Against Drugs', is found late on in the book as chapter 12. Almost all of the essays could be said to fall into one or other of the various discourses discussed there by Foster. If this chapter had been placed earlier on in the book, it could have set the tone for a far more critical analysis of the doping issue. Where chapters were descriptive of

the current position according to the particular author, their standpoint could be better understood, analysed and either strengthened or rebutted in the light of these theoretical positions.

Overall, this book gives a good, clear snapshot of the current position of the various standpoints on the issue of doping and drug taking in sport. The various perspectives, though not necessarily socio-legal, are all important as they represent the variety of opinion to be found in discussions on this controversial topic. O'Leary himself adds to this controversy by speculating that the way forward may actually be to relax some of the rules and to change the entire basis of punishment for doping offences. The coming months will show us which of the contributors has correctly foreseen the future of the regulation of doping in sport.

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## FINANCING THE CULTURAL INDUSTRIES

*Entertainment Industry Economics: A Guide for Financial Analysis*, by Harold Vogel. 5th edn., Cambridge: Cambridge University Press (2001). Pp.577, £25.00 (hb), ISBN 0 521 79624 9.

The cultural industries are a strange beast. Up-front costs in content production are often high while demand remains unpredictable; creators claim a precious bond of authorship, but are prepared to sell out when faced with an oversupply of creative ambitions; cultural consumption is curiously linked to the dynamics of fashion and the formation of personal identities. One of the most reliable guides in this bewildering landscape, since its first publication in 1986, has been Harold Vogel's *Entertainment Industry Economics*. Now in its fifth, again substantially extended, edition, it is entirely appropriate that the first issue of an ambitious new journal should include a review of this standard work.

Vogel makes us almost believe that the beast can be tamed. With a wealth of figures and the full armoury of the financial analyst, industry after industry is dissected, until we know how many cents of each cinema ticket dollar end in which hands; how the terms of royalty contracts are shaped in the music industry; how the average leisure time and spend of American citizens has evolved since the 1850s; and how to gamble in Pai Gow, Fan Tan and Sic Bo – of essential interest to the casino business.

*Entertainment Economics* includes an introductory chapter on some principles of business economics, an epilogue on common elements of the industries discussed and valuation principles, and a weighty appendix of aggregate statistics. The *pièce de résistance*, however, is the glorious 120-page section on the film industry. Vogel's unrivalled knowledge of the Hollywood studio system leaves no stone unturned. Here is the almost fanatically-detailed exposition of distributor–exhibitor contracts:

[In 'four-wall' contracts], the distributor in effect rents the theater (four walls) for a fixed weekly fee, pays all operating expenses, and then mounts an advertising blitz on local television to attract the maximum audience in a minimum of time. Yet another simple occasional arrangement is flat rental: the exhibitor (usually in a small, late-run situation) pays a fixed fee to the distributor for the right to show the film during a specified period.

Most contracts between distributors and exhibitors, however, would almost always call for a sliding percentage of the box-office gross after allowance for the exhibitor's 'nut' (house expenses, which include location rents and telephone, electricity, insurance and mortgage payments) ...

For a major release, sliding-scale agreements may stipulate that 70% or (sometimes) more of the first week or two of box-office receipts after subtraction of the nut are to be remitted to the distributor, with the exhibitor retaining 30% or less. Every two weeks thereafter, the split (and also the floor) may then be adjusted by 10% as 60:40, then 50:50, and so forth in the exhibitor's favor (85).

Vogel adds a few worked-out examples of the exhibition arithmetics of a major release, and eventually a list of six 'unscrupulous practices that can be used to skim rentals properly belonging to the distributor', including 'Bicycling, the using a single print, without authorization by the exhibition contract, to generate "free" revenues by showing it at more than one location owned by the same management' (144).

The movie chapters are followed by 20–30-page chapters on Music, Broadcasting, and Cable; and shorter chapters on Toys and Games, Games and Wagering (that is, racing, casinos, lotteries), Sports, and Amusement/Theme Parks. Recently added chapters on the Internet and traditional Publishing are somewhat bland; while the chapter on Performing Arts and Culture relies heavily on Baumol and Bowen's classic *Performing Arts* (1968), including the notorious cost disease. (Live entertainment is immune to productivity gains, thus becoming more and more expensive relative to other activities. A Mozart quartet will still take four players, and 20 minutes, 200 years on.)

This is a book about the US entertainment market. International developments only matter through the eyes of expansionist American conglomerates. Some of Vogel's analytic grid may even appear misplaced in other parts of the world, as in the characterization of TV programmes as 'scheduled interruptions of marketing bulletins' (173), of 'traditional theater, opera, and dance forums' as a 'training ground for performers in the mass-entertainment media' (326), or in the comment that 'personal-consumption expenditure (PCEs) for leisure activities are likely to be intense, frenzied, and compressed instead of evenly metered through the year' (8). One almost feels the leisure rush of hard pressed American employees after an average 2,000 annual hours at work (this compares to 1,700 in the UK and 1,500 in Germany).

For 17 years, Harold Vogel was a top analyst at New York investment bank Merrill Lynch. Perhaps surprisingly, his 577-page tome remains theoretically unambitious. Entertainment is defined as 'pleasurely diverting the psyche' (351), and the discussion proceeds from a 'decision oriented' perspective (xix): that is, deciding in which pleasurely diversion to invest as a portfolio manager. Such hedonist psychology leaves little room for insights from the sociology of culture, nor does Vogel engage seriously with the growing scholarship in cultural economics.

This is not to diminish the pertinence, for example, of Vogel's discussion of time and discretionary spending power as the chief limits to growth in the entertainment sector. Yet even on its own terms, as a 'guide for financial analysis', the discussion may appear to instil a false sense of certainty. While reading Vogel's book, I wondered repeatedly how the tools provided would cope, say, with the Napster phenomenon. The first closely researched narrative of the birth of music file-sharing has just been published (*Sonic Boom: Napster, MP3, and the new pioneers of music*). The author, John Alderman, covered the explosion of online music as the culture editor of *Wired*

*News.* Alderman's account of the tribulations of Michael Robertson, Shawn Fanning, Lars Ulrich, Hilary Rosen, David Boies and Thomas Middelhoff is a valuable read in its own right.

In the context of Vogel's analytical ambitions, Napster raises some startling questions:

- (1) How could the established music industry so completely misjudge the consumption patterns of its main audience that it managed to alienate a generation of music lovers? No analysis of the value chain (in the production, manufacturing, marketing and distribution of records) will help here.
- (2) What is the role of the regulatory framework of copyright in the development of entertainment markets? Vogel carefully reports the growing importance of home video and merchandising to the film industry: 'starting in 1986, distributors generated more in domestic wholesale gross revenues from home video (about \$2 billion) than from theatrical (\$1.6 billion) sources' (91). By 2000, the rental business had reached the staggering figure of \$18bn in US domestic sales. Yet Vogel relegates the crucial Sony decision [1984] to a footnote. In *Sony Corp. of America v. Universal City Studios Inc.* [464 US 417; 447 SC 774] the US Supreme Court rejected only by the narrowest vote of 5:4 the attempt by the movie industry to outlaw the VCR.

Can culture be tamed into an ordinary industry? Whatever view you may take, Vogel's pioneering book continues to command respect, and a prime spot in the libraries of all serious media researchers.

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## SPORT IN SCOTLAND – SOME LEGAL ISSUES

*Sport and the Law – The Scots Perspective*, edited by William J. Stewart. Edinburgh: T & T Clark, 2000. Pp.216, £50.00 (pb), ISBN 0 567 00563 1.

In his preface to *Sport and The Law – The Scots Perspective*, Donald Findlay QC suggests that the book 'will serve as a most useful aid to those already involved with [sports law]', and expresses the hope that it will 'encourage other lawyers' to take an interest in the discipline. Leaving aside the old chestnut of whether there is such a discipline as 'sports law' in any event, it is fair to say that this book does not quite scale those dizzy heights. Although it might 'encourage other lawyers', its utility as a resource for those already practising in the area is limited. However, that certainly doesn't mean the book is without merit.

Eleven academic and practising lawyers – 'The Great and the Good of Scottish Sports Law' – have joined forces to produce an eminently readable and thought-provoking overview of Scottish law's impact upon the industry. Four chapters analyse the impact of the law on specific sports, while the other seven provide a more general overview of the area.

Stewart's first chapter, entitled 'Law for the Sportsperson', provides a brief introduction to the Scottish legal system, and while most practising lawyers will find nothing new here, many sports administrators will find this section to be the most valuable for its consideration of fundamental terms and concepts. Miller's chapter on judicial review of disciplinary decisions has more to offer than other pieces on the same topic and his insightful conclusions on the role of 'sports lawyers' (to provide security against over-enthusiasm on the part of 'good laymen' rather than to be ambulance-chasers) are well made. Morris and Spink's piece on the work of the Court of Arbitration for Sport is as well-written and insightful as their other work in the field. Contributions from Middleton and Grossett on European Community (*sic*) law and doping provide valuable guidance on important topics that no collection on 'sports law' can properly ignore – even if the impact of Scottish law on these areas has been decidedly limited. The last four chapters (Messrs Duff, Crerar, Williamson and Stewart) analyse how Scottish law has impacted upon the sports of football, rugby, golf and skiing respectively, and these worthy chapters will be the ones of most use to practitioners already working in the area.

The other two pieces in the collection are the most problematic. Barton's 'Law for the Club Secretary' introduces those undervalued individuals to myriad areas of the law that impinge upon their work, be they full-time administrators or volunteers. However, the desire to cover as many aspects as possible means very little can be said about any of them. An introductory paragraph, emphasising that what follows is an attempt to 'flag up' issues by bringing administrators' attention to areas where legal advice might usefully be sought, would have been useful. In a different vein, Fletcher's chapter on sports contracts is as pertinent for what it reveals about the *habitus* of those working in the sports firmament (whether as players, administrators, lawyers or agents) as it is for its discussion of the legal principles. 'Knowledge and genuine enthusiasm for the sport is vital'; a 'strong technical knowledge' of the sport, its personalities and traditions will help oil the wheels in one's dealings with members of this 'narrow and conservative' industry. In other words, you can only hope to do the job properly if you are 'one of the boys'. By drawing on Bourdieu and Foucault one could carry out some eminently worthwhile ethnographic research on the social games of sports lawyers. This chapter would provide some useful data for such a project.

The publishers have missed an open goal by failing to target this book at students taking 'sports law' modules, whether on Sports Studies/Leisure Management programmes or on Law degrees at Scottish universities. Inevitably, the stumbling block in that respect is the price, but *Sport and the Law – The Scots Perspective* fills a niche, and those who teach such courses should place a copy or two on Short Loan. The conscientious lawyer will find this a rewarding bedtime read, but it falls short of being required reading for the practitioner, and if a second edition is contemplated, perhaps more thought could be given to what the intended audience is and how that audience can be reached. Some ruthless editing might be required too, for there are grammatical errors and banalities. 'Both as lawyers and sportsmen, Scots people have taken a pride in the standards they set and also the ethical standards to which they adhere', should never have seen the printer's ink.

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## REGULATING THE MEDIA

*Media Law*, by Sallie Spilsbury. London: Cavendish Publishing, 2000. Pp.570, £22.95 (pb), ISBN 1 85941 530 X.

This excellent book approaches media law from the point of view of both practical application and theoretical framework. The bulk of it looks at regulation of media content.

The book starts with the Human Rights Act 1998, and its effect on the media. This might seem a curious place to begin. But the principal concern of the text is the extent to which the media enjoys freedom of expression. So, when the author goes on to look at substantive law, after a helpful detour to cover both private and public law remedies, she has content and free expression very much in mind.

The first chapter in this substantive section is defamation. There is then one on malicious falsehood. By the time one has read the chapter on the law of confidence, one is almost half way through the book. There follow chapters on copyright and related rights, chapters that this reviewer would have liked to have been longer. Then we are back into human rights: privacy and, after data protection, contempt, sources, morality and secrecy/freedom of information.

The substantive section closes with a chapter on character merchandising and another on competitions. There follow the comparatively short second and third sections of the book. The first of these looks at extra-judicial regulation of media content. The second examines certain day to day transactions and, in particular, provisions from typical media agreements. Here the author aims to provide a context for what has come before.

The book is quite big. Who is it intended for? Law degree and LPC students, and practitioners. It can both be read from cover to cover and kept on the shelf for reference. It will be of use to those whose need to know about media law is frequent, as it will be to those whose need is occasional.

The book is designed to bridge the gap between traditional text books and practitioners' works. It certainly achieves explanation, with clarity and without condescension of so many basic elements of so many different topics. It takes readers through these various branches of the law, balancing the need to say enough with the need to be concise, so as to cover all these topics in just the one book.

This is not a dry textbook. It contains opinion, and innovative thought. As a lawyer in private practice, this reviewer will certainly want to have the book for its new look at problems, and their legal context.

To go back to the beginning, the Human Rights Act 1998 overlays everything. And so, this book starts straight off with it and, indeed with a paean to freedom of expression. Free speech has not been protected in this country to the same degree that it has been in the United States. The Act gives effect to the European Convention on Human Rights. Whether the need for our courts to construe legislation in line with the Convention will make much real difference to the freedom of expression allowed to our media remains to be seen. The law will develop – indeed, the author would be entitled to curse her luck in not having available the *Douglas* decision (*Douglas v. Hello! Ltd* [2001] 2 WLR 992) when discussing the development of a right to privacy in the wake of the Act. But for anyone wanting to understand the structure of the Act in 30 pages, this book is the place to come.

It sets off at a cracking pace and contains a judicious mixture of law and easy to read practical example. After that helpful chapter on remedies, the author has about

100 pages to cover defamation and malicious falsehood. That is not much space in which to provide both a beginner's guide and an interesting discussion. Somehow, she manages it. This is partly, again, through the use of example and comparison. The book is not dull. Few readers would fail to find the discussion on meaning, for instance, thought provoking.

It is on the subject of journalists' sources that the author's opinion comes through most clearly. She warns in her opening chapter that 'it is at least arguable that English law concerning the disclosure of sources has been applied in a way which cannot be reconciled with the Convention'. This is a mild way to put it. English courts' lip service to the value of the role of the journalist is illustrated by the decision of the House of Lord in *X Ltd v. Morgan Grampian (Publishers) Ltd* [1991] 1 AC 1. This was a case in which the Law Lords ordered disclosure of a journalist's notes. In doing so, the Lords saw 'the interests of justice' as extending to enabling someone to exercise important legal rights and protect himself from serious legal wrongs, regardless of whether he resorts to legal proceedings to attain those objectives. Thus, the desire of an employer to be able to sack a disloyal employee qualifies as engaging 'the interests of justice', so that a source may have to be revealed, where otherwise it was protected. The author comments, with restraint, that the breadth of the concept of the interests of justice has substantially reduced the media's immunity from disclosure. She could have said that this was an astounding judgment, in which our highest domestic court showed what the media is up against. The European Court of Human Rights, as one can see from *Goodwin v. UK* [1996] 22 EHRR 123, was boxed in on the issue, and those defending the media now have to persuade courts to work around a very hostile definition.

This can be done, as Lord Woolf showed in *John v. Express Newspapers* [2000] 1 WLR 1931, a decision which post-dates both the *Morgan-Grampian* and *Camelot Group Plc v. Centaur Communications Ltd* [1999] QB 124 cases and, as the author says, departs from the approach of previous courts.

The way in which courts treat the issue of source indicates the value courts ascribe to freedom of expression. As the author says, the media must hope that future cases follow the spirit of the Court of Appeal's decision in *John*, and afford real weight to the wider public interest in freedom of expression if the anonymity of sources is to be truly protected.

In conclusion, this book contains a nice blend of material – to inform and to provoke thought and discussion.

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## THE RISE AND FALL OF NAPSTER

*Sonic Boom. Napster, MP3, and the New Pioneers of Music*, by John Alderman. Cambridge, Mass: Perseus Publishing, 2001. Pp.205, £17.00 (pb), ISBN 0 7382 0405 6.

John Alderman's brisk and engaging account of the rise and fall of Napster covers wearisomely familiar ground. A new technology threatens the way of working of an established industry, which responds by trying to have the new competitors shut down.

The Luddites of the last 18 months don't smash machinery, or go on indefinite strike; they invoke the concept of intellectual property, their lawyers prove to the court's satisfaction that the new technology embodies a form of theft and said new technology ceases to operate.

We have indeed been here before. The music business, always legally trigger-happy in its own defence, was upset in the mid-1970s by the success of the humble compact cassette. CBS Records co-ordinated a campaign headed 'home taping is killing music'. Then the rise of the VCR raised similar concerns in the minds of film and television companies. Together they lobbied all and sundry arguing that the copyrights they held on behalf of their creative artists were being infringed. By the end of the 1980s most Western countries (but not the UK) had imposed a blank tape levy on audio and video tapes, paid as a blanket fee to record labels and audiovisual companies. Meanwhile the first digital recording technologies, such as DAT – digital audio tape – were in effect suppressed as consumer devices by an industry terrified of the possibility of perfect copies. DAT recorders simply never became cheap enough for most consumers.

MP3, however, is not hardware but software. It is a form of file compression which allows musical information to be stored using relatively little computer memory. The first MP3 players appeared in 1999 and in order to make these Walkmanlike devices work you download files from your computer, perhaps from your own CD collection, perhaps the internet. A number of websites such as IUMA.com and MP3.com provided music files free of charge and unsigned bands clamoured, and even paid, to have their music available on them. Meanwhile a few young men (yes, men), none of them part of the established music business, wrote 'peer to peer' or P2P programs which allowed users to share the song files on their hard drives with others, in a potentially infinite chain of connection. One such program was Napster, which had approximately 50 million registered users (of whom some 500,000 used the site per day) by early 2000. Such files could be copied from any source, but the most common was commercially pre-recorded CDs. The music business stood to lose millions of sales.

Meanwhile, what of the music business itself in this age of information? Had it prepared a music distribution system of its own, while MP3.com and Napster were moving the goalposts for the music collector? It had tried, half-heartedly, and failed despite the collective culture shift of the early 1990s that constructed an imaginary information superhighway – endorsed by Bills Clinton and Gates – as the internet began to evolve. By the mid-1990s Sony, for example, was collectively convinced that the future was in creative soft rather than hardware. Sony developed their para-Mac computer system, the VAIO, as a multimedia device, rather than a PC (which they saw, rightly, as an accounting device with a few flash add-ons). However, as Alderman points out, even Sony did not manage to produce any new music-related software of its own, for all its history of innovating personal-use products such as Walkman and Discman, its pioneering of DAT and other digital recording technologies, and its ownership of Columbia films and the former CBS record label. Like the rest of the music business, Sony was caught napping because fear of piracy prevented it from developing the web as a music retail space. The various attempts by the music business as a whole to produce a collective Secure Digital Music Initiative were stymied by disagreements among the various companies, not to mention the basic technical difficulties in producing hackerproof software. Labels such as Virgin promised MP3 sites with their whole back catalogue; none delivered.

Instead they tried to hold back the waves. The industry badly needed a human face for this Canuteish project, and they struck lucky in the unlikely form of Lars Ulrich,

Metallica's drummer. Unlikely because Metallica had always been easy about bootlegging – they reasoned that a tapeswapping culture among their fans was developmental rather than criminal. But they drew the line when one of their studio recordings was made available in MP3 format and was therefore being merrily swapped on Napster before its commercial release. Ulrich led a campaign to restore Metallica's copyright, and on the back of it the Recording Industry of America Association pursued Napster through the courts. The Digital Millennium Copyright Act, passed by Congress in 2000, its fierce antipiratical stance aimed principally at protecting America-based global capital, was invoked to shut down this shining example of American innovation and free enterprise. In February 2001, three judges from the Ninth Circuit Court of Appeals confirmed earlier rulings that Napster had infringed copyright. The site ceased to operate.

At the time of writing Napster is trying to go legit, in partnership with major label BMG; it plans to offer a subscription service which will allegedly 'reward the copyright holder'. We'll see. Perhaps the most telling passage in *Sonic Boom* is not by Alderman himself but the book's preface by the distinguished jazz keyboardist Herbie Hancock. Registering his deep concern at the potential piracy of the products of years of dedication to a difficult craft, Hancock still frames his unease by expressing vehement anger at the practices of the music business which has ripped him, and so many others, off. He warns that an internet music distribution service which is to the liking of the music business will be unlikely to pass on significant rewards to musicians. Copyright law – and the very concept of intellectual property – is there to protect the corporations, not the creative artists signed to them and unless P2P destroys the music business, musicians will remain subordinates.

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