



**COPYRIGHT USERS:
RIGHTS WITHOUT REMEDIES?**

AN ACCESS TO JUSTICE PERSPECTIVE

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Copyright User Rights and Access to Justice
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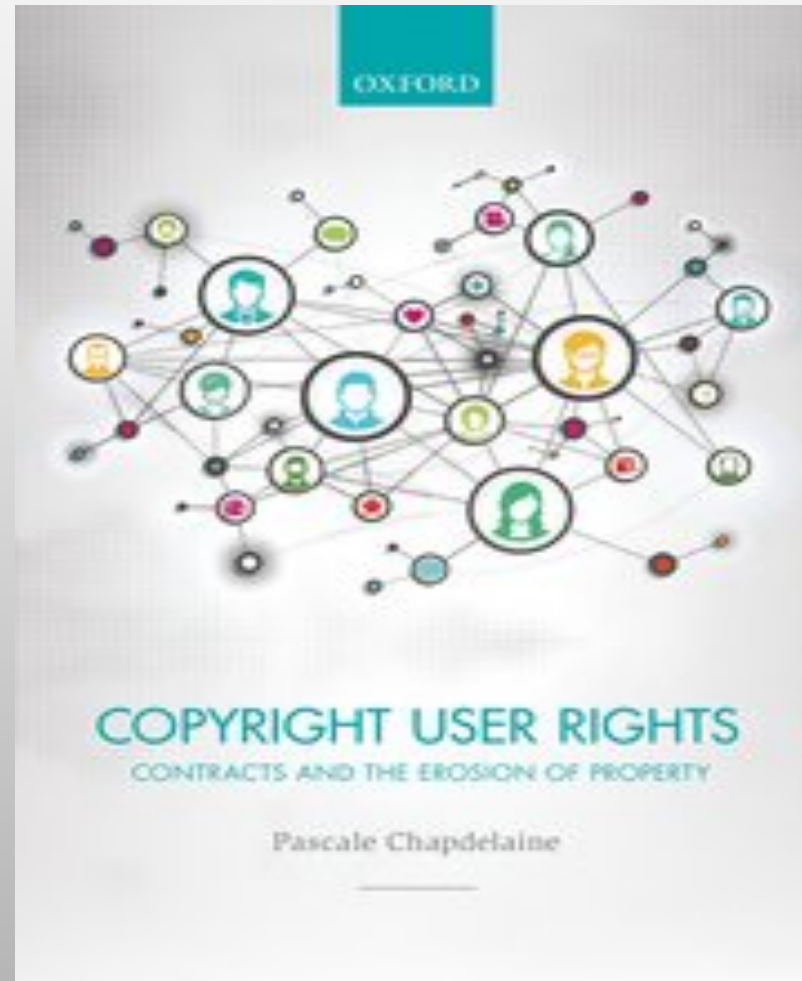
What this paper is about

- Questioning value of looking at copyright user rights through remedies
- Current landscape of copyright user remedies
- Contributions of an access to justice perspective
 - What is access to justice?
 - Justice for users
 - Attention to specific classes of users
 - Limited value and function of traditional remedies for copyright users
 - Some application of A2J insights to user rights

Why talk about copyright user remedies?

Copyright Users and Remedies

Chapter 3: In search of copyright user remedies



Chapter 3: In search of copyright user remedies

- Copyright users have no remedies in Canada's *Copyright Act* for illegitimate constraints on their uses of copyright works (unlike e.g. Belgium, France, UK)
- Debunks idea that laws outside copyright law are well equipped to address consumer/user concerns
 - Four scenarios up-hill battle to construct valid claims for users against copyright holders
 - Undefined contours of rights of users (i.e. personal property and pursuant to copyright exceptions)
 - Bias towards exclusive rights of copyright holders
 - Exacerbated with implementation of TPMs
 - Uncertainty between interaction between contracts and copyright law

Contributions of an Access to Justice Perspective

Access to Justice and Copyright Users Spheres of Inquiry



Roderick A. MacDonald
(1948-2014)

**“Access to Justice in
Canada Today: Scope,
Scale and Ambitions”**
in J. Bass, W.A. Bogart
& F. H. Zemans, eds
*Access to Justice for a
New Century, The Way
Forward* (2005)

Access to Justice Spheres of Enquiry

R.A. Mac Donald's "Five waves" of Access to Justice

- Access to lawyers and courts (1960s)
- Institutional redesign (1970s)
- **Demystification of law (1980s)**
- **Preventative law (1990s)**
- Proactive access to Justice (2000s and onward)

Access to Justice and Copyright Law

Universal Declaration of Human Rights art 27



Access to Justice and Copyright Users

“Justice” for Users

- Respect for users' fundamental rights (e.g. freedom of expression)
- Enabling optimal levels of access to knowledge, creations and innovation
- Equality, e.g.: substantiating personal property rights of users in copies of copyright works

Attention to specific class of users

Access to Justice and Copyright Users

Limited value of traditional remedies

- Even in best case scenario (i.e. rights reasonably clear) remedies give a narrow perspective of “just” treatment of right holder
- For copyright users: not too early... but too soon and in the end too limited
- Need to look elsewhere

Limited Value of Traditional Remedies

Need to look elsewhere

Equality before the law

Reforming user rights

Taking care of users outside dispute phase

- Code architectures and incentives to improve access and sharing of copyright works
- Favouring non-dispute resolution

Mobilisation/participation of user interests
groups interests in legal reforms

What reforms for copyright users?

Guiding principles

- Onus on copyright holders to grant access to copyright works in some cases
- Regulate copyright holders commercial practices that deviate from core objective of copyright law
 - (e.g. presumption of non-enforceability of contract clauses)
- Technological neutrality

What reforms for copyright users?

Taxonomy and hierarchy of user rights

- User-copy owners
- Service users
- Public-space users

User right/privilege outer limits no substantial adverse effect on exploitation of copyright work and moral rights of the author
