

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

Law and Creativity in the Age of the Entertainment Franchise

Much of the real value in the entertainment industry today lies in franchises – fictional universes, entertainment concepts, reinventions of cultural traditions and celebrity – that create an ongoing presence in the marketplace. The entertainment franchise now shapes the global cultural landscape. However, scholars have devoted little attention to how intellectual property law has changed or is being stretched in practice to accommodate this type of creativity and form of enterprise.

Covering law and practice in jurisdictions such as the United Kingdom, the EU, the USA, Australia, Spain and the Caribbean, this collection explores the ‘fit’ of intellectual property laws with specific franchises and tracks the way creators and entrepreneurs work around law’s limitations. Case studies include mega-film franchises, fan activity, hip-hop, the management of celebrity reputation, flamenco, ‘Disneyfied’ theatre, film and television funding, arts festivals and ‘Carnival in a box’.

KATHY BOWREY is a professor at the Faculty of Law, University of New South Wales, Sydney.

MICHAEL HANDLER is an associate professor at the Faculty of Law, University of New South Wales, Sydney.

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

Cambridge Intellectual Property and Information Law

As its economic potential has rapidly expanded, intellectual property has become a subject of front-rank legal importance. Cambridge Intellectual Property and Information Law is a series of monograph studies of major current issues in intellectual property. Each volume contains a mix of international, European, comparative and national law, making this a highly significant series for practitioners, judges and academic researchers in many countries.

Series editors

Lionel Bently

Herchel Smith Professor of Intellectual Property Law, University of Cambridge

William R. Cornish

Emeritus Herchel Smith Professor of Intellectual Property Law, University of Cambridge

Advisory editors

François Dessementet, *Professor of Law, University of Lausanne*

Paul Goldstein, *Professor of Law, Stanford University*

The Rt Hon. Sir Robin Jacob, *Hugh Laddie Professor of Intellectual Property, University College, London*

A list of books in the series can be found at the end of this volume.

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

Law and Creativity in the Age of the Entertainment Franchise

Edited by

Kathy Bowrey and Michael Handler



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise
Edited by Kathy Bowrey and Michael Handler
Frontmatter
[More information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107039896

© Cambridge University Press 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2014

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Law and creativity in the age of the entertainment franchise / edited by
Kathy Bowrey, Michael Handler.

pages cm – (Cambridge intellectual property and information law)

Includes bibliographical references and index.

ISBN 978-1-107-03989-6 (hardback)

1. Authorship. 2. Intellectual property. 3. Copyright. 4. Franchises
(Retail trade) – Law and legislation. 5. Entertainers – Legal status, laws, etc.
I. Bowrey, Kathy, editor. II. Handler, Michael, editor.

K1440.L39 2014

346.04'8 – dc23 2014032211

ISBN 978-1-107-03989-6 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

Contents

<i>List of figures</i>	page vii
<i>List of contributors</i>	viii
<i>Acknowledgements</i>	ix

Part I Introduction

1 Franchise dynamics, creativity and the law	3
KATHY BOWREY AND MICHAEL HANDLER	

Part II The productivity of the author model: authors, collaborators and non-authors

2 The author strikes back: mutating authorship in the expanded universe	29
LIONEL BENTLY AND LAURA BIRON	
3 Franchises, imaginary worlds, authorship and fandom	52
DAVID LINDSAY	
4 Digital sampling and music industry practices, re-spun	75
JOHNSON OKPALUBA	

Part III Managing authorship

5 Building and rebuilding reputations: reflections on the role of defamation law in the life of a celebrity	103
DAVID ROLPH	
6 Dramatic copyright and the 'Disneyfication' of theatre space	123
BRENT SALTER AND KATHY BOWREY	

v

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

vi	Contents	
7	Instituting copyright: reconciling copyright law and industry practice in the Australian film and television sector KATHY BOWREY AND MICHAEL HANDLER	140
8	Flamenco music in copyright historiography JOSÉ BELLIDO	170
Part IV Group rights and culture		
9	Arts festivals: property, heritage or more? FIONA MACMILLAN	197
10	Franchising carnival: issues of rights and cultural identity SHARON LE GALL	216
	<i>Index</i>	236

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

Figures

- | | | |
|-----|---|----------|
| 8.1 | The magazine <i>El Cabecilla</i> (1887) with the caption:
'Practical results of the <i>ALAI</i> Literary Conference:
reception, dinner, bullfight and flamenco' | page 172 |
| 8.2 | 1911 Atlas produced by the Spanish Collecting Society of
Authors (1910) | 175 |
| 8.3 | Map of the folkloric missions in which García Matos
participated | 187 |
| 8.4 | <i>Una Historia del Cante Flamenco</i> (Hispanvox) | 189 |

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

Contributors

JOSÉ BELLIDO is a senior lecturer, Kent Law School, University of Kent

LIONEL BENTLY is Herchel Smith Professor of Intellectual Property and Director, Centre for Intellectual Property and Information Law (CIPIIL), Faculty of Law, University of Cambridge

LAURA BIRON is a lecturer in philosophy, University of Kent

KATHY BOWREY is a professor at the Faculty of Law, University of New South Wales, Sydney

MICHAEL HANDLER is an associate professor at the Faculty of Law, University of New South Wales, Sydney

SHARON LE GALL is a lecturer at the Faculty of Law, University of the West Indies

DAVID LINDSAY is an associate professor at the Faculty of Law, Monash University

FIONA MACMILLAN is a professor of law, Birkbeck, University of London and Visiting Professor of Law, University of Roma Tre

JOHNSON OKPALUBA is a visiting lecturer, Dickson Poon School of Law, King's College London

DAVID ROLPH is an associate professor, Sydney Law School, University of Sydney

BRENT SALTER is a visiting fellow at the Faculty of Law, University of New South Wales, Sydney and PhD student, Yale Law School

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

Acknowledgements

This book is the product of an Australian Research Council (ARC) Discovery Project Grant entitled ‘Entertainment Rights in the Age of the Franchise’ (DP0985948). We thank the ARC for its financial support and Leanne Palmer at UNSW for her administration of the grant over a number of years.

The collection of essays in this book is largely based on a series of papers delivered at a workshop entitled ‘Culture Industries and the Franchise’, held in Sydney in July 2011. We thank the participants at the workshop for all their work – for embracing the themes of our project, for their generosity in commenting on each other’s papers at the workshop and for their efforts in turning their workshop papers into the chapters in this collection. We are also grateful to Angela Sutton for her assistance in organizing the workshop.

Thanks go to the participants at the International Society for the History and Theory of Intellectual Property (ISHTIP) workshops at Università Bocconi, Milan in June 2009 and Université Panthéon Assas (Paris 2) in June 2013 for their helpful feedback on the papers we presented at those workshops, which helped influence our own chapters in this collection. Thanks also to the numerous colleagues with whom we have discussed our ideas over the course of this project, including Catherine Bond, Jason Bosland, Robert Burrell, Lesley Hitchens, Jill McKeough, Albert Moran, Joellen Riley, Brad Sherman, Kim Weatherall, and the Australian lawyers, entertainment industry professionals and agents we spoke to in 2011 and 2012.

Sincere thanks go to our team of UNSW research assistants who have worked on our franchise project since 2009 – Louise Buckingham, Sophia Christou, Lizzie Fuller, Marie Hadley and Bailee Walker – for their diligence and for helping shape the contours of the project. We also express our gratitude to Jennifer Kwong from UNSW, and Kim Hughes, Richard Woodham and Jo Breeze from Cambridge University Press, for their excellent editorial work on this collection.

Cambridge University Press

978-1-107-03989-6 - Law and Creativity in the Age of the Entertainment Franchise

Edited by Kathy Bowrey and Michael Handler

Frontmatter

[More information](#)

x Acknowledgements

Finally, we would like to thank our families for their love, support and willingness to engage with our franchise project and our ideas over the last few years. Without them this book would not have been possible.