



Book Review: Hayleigh Boshier, *Copyright in the Music Industry: A Practical Guide to Exploiting and Enforcing Rights*

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Dr Metka Potočnik**

Dr Hayleigh Boshier's *Copyright in the Music Industry* is the latest addition to numerous titles trying to decipher the complexities of intellectual property (IP) and other rules relevant to the music industry.¹ With specific focus, care for her audience and a practical approach, Boshier joins several other expert attempts wishing to explain IP and other rights to the artists creating the music, or any other non-legal audience.² Readers focused on investigating the complexity and detail of the rules further will want to explore the many titles on IP and business of the music industries in the UK and abroad.³

Boshier is one of the co-creators of the copyrightuser.org resource, which offers a practical approach to understanding copyright rules in the creative industries. Linking this book and the project, Boshier adopts an easy-to-follow approach for the reader, when she identifies eight myths about copyright, which the reader will be able to 'bust,' upon reading this book:⁴

1. You can use a copyright work without permission as long as you are not making money from its use.
2. You have to register your work in order to obtain copyright protection.
3. You can use a copyright work as long as you credit the author.
4. You always need permission to use copyright works.
5. Changing or editing someone else's work enables you to use it without infringing copyright.

* The eBook version is priced from £20/\$26 from Google Play, ebooks.com and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.

** Dr Metka Potočnik is a Senior Lecturer at the Law School of the University of Wolverhampton. ORCID ID: 0000-0002-9985-0827.

¹ Hayleigh Boshier, *Copyright in the Music Industry: A Practical Guide to Exploiting and Enforcing Rights* (Edward Elgar Publishing, 2021).

² Guide 'Music Copyright Explained' (2021) commissioned by the Intellectual Property Office, produced by CMU Insights. Available: <https://musiccopyrightexplained.com/> (downloadable pdf guide). Additionally, PRS for Music offers copyright notes online: <https://www.prsformusic.com/works/how-copyright-works> and similarly, PPL explains the royalties system online: <https://www.ppluk.com/royalties-explained/>. Boshier was also on the team preparing the <https://www.copyrightuser.org/> which explains copyright to creatives from several fields (not solely music). WIPO also prepared a guide for practitioners in the music industries, which is written for non-lawyers: 'How to Make a Living from Music' (WIPO, 2014) Booklet No 4, 2nd edition: <https://www.wipo.int/publications/en/details.jsp?id=260&plang=EN>. All links in this contribution have been verified on 10 August 2021.

³ To name a recent title, see Ann Harrison and Tony Rigg (eds), *The Present and Future of Music Law* (Bloomsbury, 2021). Specifically on the business of the music industry: Ann Harrison, *Music: The Business* (8th edn, Ebury Publishing, 2021) (with updates on Covid-19).

⁴ Boshier (n1) 14.

6. There is a specific amount of someone else's work that you can borrow without infringing their copyright.
7. Putting a disclaimer when using someone else's work avoids copyright infringement.
8. You need permission to use copyright works for a school project."⁵

Busting the myths approach is just one of the many strengths of *Copyright in the Music Industry*.⁶ The tone of the book remains easily accessible and understandable throughout, and legal concepts are clearly explained. Boshier continues to pace her observations as per the intended audience; "[t]his book is primarily written for musicians, artists, producers, performers and those working in the music industry."⁷ Such delivery aims to assist the audience, which is not (yet) familiar with the basics of copyright, to gain appreciation for the fundamental principles in this area of the law, and as Boshier notes, "when it comes to copyright, a little bit of knowledge can go a long way."⁸ The accessibility of the book's content will be welcomed by other audiences as well, including lawyers and experts wishing to address and engage audiences without legal expertise; or educators in musical courses aiming to explain the industry to their students.

Boshier's practical approach extends to her delivery of IP law, and other relevant rules, and is demonstrated by using examples from practice. Prefaced with a playlist, which is helpfully indexed to the content of the book by pages, the book is placed in the practical experience of musicians with IP rules.⁹ This renders the delivery of copyright-related concepts appealing even to law students, who might find the traditional delivery of copyright rules, a 'bit dry.' Although this book cannot replace the detailed handbooks and textbooks on IP rules or business rules in the music industries, it is an important 'awareness raising tool' due to Boshier's clear, transparent, and deliberate aim to convey the basics of the system to all the book's intended readers. This is of course coupled with the important advice, that when entering a new creative relationship, or dealing with an unfamiliar area of the music business, legal expertise is best sought from the professionals in the area.

At the start, Boshier aims to explain to her readership in **Part I: Music and Copyright** why copyright matters, with the resulting appeal that artists should not ignore the rules because they are too complex. Boshier builds the book within the system 'as is,' operating under the premise that copyright is "for the creator"¹⁰ and its rules designed "to help creativity."¹¹ With some references to artists' interviews in the copyrightuser.org project,¹² Boshier aims to encourage a higher awareness of copyright rules, which will benefit any artist in the industry.¹³

Chapter 2 explains the notion of copyright and how it arises. In its delivery Boshier continues to use musical examples, bringing the legal principles closer to the intended audience (i.e. references to John Cage's 4'33" piece, recorded in 1952¹⁴ or the Happy Birthday to You

⁵ Researched by Hayleigh Boshier and edited by Ronan Deazley, "Myth v Reality" cards available: <https://www.copyrightuser.org/educate/enjoy/myth-reality-cards/>. Cards produced by Bartolomeo Meletti, illustrations by Davide Bonazzi and design by Marco Bagni.

⁶ Boshier (n1).

⁷ Boshier (n1) 11.

⁸ Boshier (n1) 11.

⁹ See for example Chapter 12, dealing with cases of *Blurred Lines* (by Pharrell Williams and Robin Thicke), *Dark Horse* (by Katy Perry), *Thinking Out Loud* (by Ed Sheeran) and *Stairway to Heaven* (by Led Zeppelin) in Boshier (n1) 139-150.

¹⁰ Boshier (n1) 5.

¹¹ Boshier (n1) 6.

¹² Boshier (n1) 9. Although this is not an extensive overview of various groups of artists and the creative talent in the industry, the connection of the book with a previous, evidence-led project (<https://www.copyrightuser.org/>) is a helpful one.

¹³ Chapter 1 in Boshier (n1) 3-14.

¹⁴ Boshier (n1) 22.

song, created by the Hill Sisters¹⁵). The reader starts to appreciate the object of protection in copyright law. In *Chapter 3*,¹⁶ the reader learns more about copyright in a song, including the protection offered in sheet music, lyrics, melody, sound recording and album artwork. The chapter includes helpful comparative notes from the United Kingdom (UK) and the United States (US). This is important because copyright, as all IP rights, is a territorial right. Once familiar with the object of protection, the reader learns about the rights granted, when in *Chapter 4*,¹⁷ Boshier explains the economic, moral and performers' rights granted by statutory law. The latter two categories are explained only briefly. Some helpful notes are also made on publicity or image rights.¹⁸ This chapter does not refer to rights engaged in music streaming, but some observations are made in other places in the book.¹⁹

In the concluding chapter to **Part I**,²⁰ Boshier explains exclusions, exceptions, and defences in copyright law. It is not clear whether in cases of parody, an artist is required to (see Boshier),²¹ or merely encouraged to seek prior permission from a rightsholder. That notwithstanding, this section offers a good overview of parody as a defence against a copyright infringement claim. The position in the UK and the US are presented separately. Parody in both systems is regulated differently and cases reported more broadly should be appreciated with the differences of the two legal systems in mind.

In **Part II: Managing Music Copyright** Boshier delivers five chapters, in which she unpacks the complexities of the music business and management related issues. This is a welcome section to the book, which holds particular value to everyone new to the music business. In *Chapter 6*, Boshier starts with rules on ownership in copyright law,²² focusing on the needs of creatives in the music industries. In *Chapter 7* Boshier continues the discussion by identifying and explaining the multiple stakeholders in the industries: from individual artists to bands and contributors; legal and music experts (with useful tips on how to find appropriate experts);²³ managers, record labels and music publishers; collecting societies (sometimes referred to as collective management organisations);²⁴ and finally professional bodies and communities. This chapter is a useful roadmap of 'who-is-who' and hence a 'must-read' introduction to Chapters 8 and 9, dealing with music contracts and licensing.

Contracts are regulated by the parties, who enter into them freely. In *Chapter 8*, Boshier sheds light on the numerous types, commonplace in the music industries, including: (1)

¹⁵ Boshier (n1) 23.

¹⁶ Boshier (n1) 27-38.

¹⁷ Boshier (n1) 39-52.

¹⁸ Boshier (n1) 51-52.

¹⁹ Boshier (n1) 107-108, 134-135. For a fuller discussion on streaming in the music industries, see the current issue of WLJ: Metka Potočnik, 'Neutral is the New Blind: Calling for Gender Segregated Evidence in UK Legislative Inquiries regarding the Music Industries' (2021) 6 WLJ 69.

²⁰ Chapter 5 in Boshier (n1) 53-64.

²¹ Boshier (n1) 60 (referring to a requirement in the law under s.30A and Schedule 2(2A), as explained in www.copyrightuser.org/understand/exceptions/parody-pastiche). On the plain reading of the text of the relevant provisions, there is no requirement to seek permission for the parody fair dealing exception to apply. L Bently, B Sherman, D Gangjee and P Johnson, *Intellectual Property Law* (5th edn, OUP, 2018) 249 (since the change in 2014, "[t]o benefit from this defence, there is no express requirement that a parodist acknowledge the work that is parodied or its authorship").

²² Boshier (n1) 67-76.

²³ Boshier (n1) 78-80 (referring to the Law Society "Find a Solicitor" functionality: <https://solicitors.lawsociety.org.uk>). Members of the Musicians Union can also follow their trade union's directory and guidelines, in seeking legal advice: <https://musiciansunion.org.uk/membership-benefits/legal-advice-and-assistance/legal-advice-and-assistance-guidance-and-form>.

²⁴ See the Guide (n2) for a useful explanation of all relevant collective management organisations in the UK, and their role in different music transactions. In the UK there are two CMOs dealing with copyright in songs: PRS and MCPS (both administered by PRS for Music: <https://www.prsformusic.com/>); and the third CMO, dealing with copyright in sound recordings (phonograms), PPL: <https://www.ppluk.com/>.

collaborator agreements, such as band, group and duo agreements;²⁵ or songwriters, vocalists, producers and session musicians agreements;²⁶ (2) management contracts, which are crucial to artists with managers;²⁷ (3) recording contracts, for artists, who are working with record labels or recording companies;²⁸ (4) and publishing contracts for the exploitation of musical compositions, including administration agreements, a single-song assignment; and exclusive publishing deals.²⁹ More broadly, Boshier signposts to contracts, which regulate other ways in which artists can earn an income, including (5) sponsorship, product placement and influencer deals;³⁰ and (6) merchandising agreements.³¹ Although increasingly common in practice, Boshier does not deal with 360-deals.³²

Continuing with contracts, Boshier explores licensing in *Chapter 9*. Licences, or permissions to use copyright protected works, are distinguished from assignment, or a transfer of ownership in copyright, which is valid only when done in writing.³³ This area is left to the parties' negotiation power and skill, bar for two exceptions in UK contract law: undue influence and restraint of trade (comparative systems are not explored). Boshier then explores different types of licenses: (a) mechanical licensing ("a licence to reproduce a song into a sound recording");³⁴ (b) synchronisation licences (for use of music in films, advertisements or video games, etc);³⁵ (c) extended collective licence (i.e. a clearing of rights for multiple copyright works (quickly and at once), a theoretical option in UK);³⁶ (d) blanket licence (referring to collecting societies mode of operandi in licensing their repertoire);³⁷ and (e) creative commons.³⁸

Part II concludes with *Chapter 10*, in which Boshier explores some issues regarding social media. The chapter offers some brief observations on content posted on Instagram and Facebook, and focuses more on music-driven platforms, such as TikTok and YouTube. Boshier places her practical observations in the broader regulatory framework in the European Union, which has been reformed with the Digital Single Market Directive,³⁹ and specifically Article 17,⁴⁰ which regulates platforms such as YouTube. Online platforms will now be held as communicating copyright protected content to the public, and potentially liable for copyright infringement, unless "they made best efforts to obtain authorisation."⁴¹ Boshier rightfully warns of the importance of knowing platforms standard terms and conditions, and the extensive licences users agree to, when agreeing to use the platform and uploading their content.

²⁵ Boshier (n1) 92-93.

²⁶ Boshier (n1) 93-94.

²⁷ Boshier (n1) 94-95.

²⁸ Boshier (n1) 96-97.

²⁹ Boshier (n1) 97-98.

³⁰ Boshier (n1) 98-100.

³¹ Boshier (n1) 100-101.

³² WIPO, "How to Make a Living from Music" (n2) 103 (360-deals or agreements are contracts in which "In addition to recording income, phonogram producers are demanding participation in other income such as publishing income, income from live work, merchandising income and income from branding and sponsorship etc.").

³³ Boshier (n1) 103.

³⁴ Boshier (n1) 107.

³⁵ Boshier (n1) 108.

³⁶ Boshier (n1) 109.

³⁷ Boshier (n1) 109.

³⁸ Boshier (n1) 109-110. Further information: <https://creativecommons.org/>. For works which can be freely used, the easily accessible search for images can be found here: <https://search.creativecommons.org/>.

³⁹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

⁴⁰ This article has been seen as controversial, for its changed approach to the previously existing regulation of online intermediaries, under the safe harbour rules.

⁴¹ Boshier (n1) 121.

Copyright rules are important from two sides: on the one hand, copyright gives the creators rights and opportunities for commercialisation. On the other hand, copyright of third parties acts as a boundary or a limitation in what we can or cannot do with works, which are protected by copyright. Embedded in the context of the music industry **Part III: Infringement** offers significant insight into the meaning of infringement and its implementation in practice. Starting with *Chapter 11*, Boshier offers a fundamental overview of remedies in civil law (primary and secondary infringement);⁴² criminal law,⁴³ including online copyright infringement (with observations on 'value gap' in streaming);⁴⁴ and adding some cursory notes on other areas of the law (*i.e.*, fraud, contract, passing-off or unfair competition, defamation, and human rights).⁴⁵

When is a copy of a song a step too far? It is in *Chapter 12* that Boshier delves deeper into the substantial copying test (in UK terms), which is the test to determine whether a copy of a song infringed copyright in the pre-existing song. The illustrative examples from practice have been tried by US courts. Boshier explains a series of cases,⁴⁶ which led to the current position in the US that 'musical building blocks' or 'common musical elements' belong to the public domain, and the mere existence of the same building blocks in the two songs will not result in copyright infringement, thereby reinstating the approach that copyright protects expression, not ideas. To complement the approach in US jurisprudence, Boshier offers further guidance on drawing the line between inspiration *v* imitation, or as referred to by copyright experts, appreciate the idea/expression dichotomy in *Chapter 13*. It is well worth remembering that copyright regulates copying, not inspiration⁴⁷ and that unlike the sixth myth might suggest, there is no set quantity of someone's song we can use: the question remain on the quality and importance of the part taken.

In *Chapter 14*, Boshier explores music sampling,⁴⁸ with a clear recommendation for all sampling to be accompanied by a licence, which is to be acquired before the sampling occurs. In *Chapter 15* Boshier concludes **Part III** by bringing broader matters of copyright infringement, bootlegging (unlawful copies of performances), counterfeit goods or merchandising, to the reader.⁴⁹ These rules are relevant to other business transactions, where musicians are earning an additional income stream, and IP rights which govern the commercialisation, are separate to copyright existing in a song, or accompanying recording.

In **Part IV: Enforcement** Boshier concludes her exploration of copyright law, with an overview of 'what can be done' if copyright was infringed. Although set in a practical tone, this part focuses on court procedures, and leaves the practicalities of alternative dispute resolution to the reader to explore (mostly) on her own.⁵⁰ *Chapter 16* outlines the start of a procedure⁵¹ and *Chapter 17*

⁴² Boshier (n1) 125-132.

⁴³ Boshier (n1) 132-134.

⁴⁴ Boshier (n1) 134-136.

⁴⁵ Boshier (n1) 137-138.

⁴⁶ Boshier (n1) 139-150 (cases: (1) *Blurred Lines* by Pharrell Williams and Robin Thicke; (2) *Dark Horse* by Katy Perry; (3) *Thinking Out Loud* by Ed Sheeran and (4) *Stairway to Heaven* by Led Zeppelin. The *Blurred Lines* success of awarding millions of \$ dollars in damages opened the floodgates of copyright infringement suits in the music industries. After the decision in *Stairway to Heaven* (referring again to copyright protecting expression, not ideas), *Dark Horse* and *Thinking Out Loud* cases were dismissed, closing the previously open floodgates).

⁴⁷ Boshier (n1) 153.

⁴⁸ Boshier (n1) 157-164.

⁴⁹ Boshier (n1) 165-172.

⁵⁰ Boshier (n1) 192 (briefly mentions ADR). ADR, in particular mediation and/or arbitration, offers a valuable route of IP enforcement, alternative to domestic court litigation, in particular for individual or independent artists, involved in cross-border disputes: Metka Potočnik, 'Mediation and Arbitration: An Alternative Forum for Transnational Dispute Resolution in the Music Industries' in Ann Harrison and Tony Rigg (eds), *The Present and Future of Music Law* (Bloomsbury, forthcoming: 26 August 2021).

⁵¹ Boshier (n1) 175-182.

the practicalities of bringing forward a copyright infringement claim (including jurisdiction).⁵² Another practical consideration for music disputes decided by lawyers, is the role of expert witnesses, and musicology reports, as elaborated in *Chapter 18*.⁵³ If a rightsholder is successful, she will be entitled to remedies under the law, and Boshier outlines these briefly in *Chapter 19*.⁵⁴ The final chapter of **Part IV** offers some practical guidance to anyone wishing to stop online infringement of their IP rights.⁵⁵

The concluding **Part V: Looking to the Future**, as is suggested by its title, explores issues, which might prove to be of consequence going forward. Here, Boshier explores areas of artificial intelligence⁵⁶ and blockchain,⁵⁷ as they apply in the context of the music industries. Overall, there are several strengths in Boshier's approach, which make *Copyright in the Music Industry* a distinct addition to any shelf of an interested reader.

⁵² Boshier (n1) 183-192.

⁵³ Boshier (n1) 193-199.

⁵⁴ Boshier (n1) 200-207.

⁵⁵ Boshier (n1) 208-213.

⁵⁶ Boshier (n1) 215-224.

⁵⁷ Boshier (n1) 225-229.