

Table of Contents

<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xix
<i>List of Abbreviations</i>	xxv

Introduction: Do Copyright Users Have Rights?	1
Preliminaries	1
Terminology	5
Overview	6

PART I IN SEARCH OF COPYRIGHT USER RIGHTS

1. User Rights to Commercial Copies of Copyright Works	13
A Peculiar Form of Personal Property	13
Sometimes a 'Good' ... and Sometimes Not	16
Do Users Own the Copies of Copyright Works They Buy?	19
Copyright users and the ownership spectrum	20
Juridical relation between a person and a resource	21
Open-ended privileges and powers	22
Privileges and powers that authorize self-seekingness on the part of the owner	26
Commercial Copies of Copyright Works and the Standardization of Property	27
If Neither Owned by the Copyright User Nor a Good, Then What?	31
2. The Nature and Function of Exceptions to Copyright Infringement	33
Exceptions as 'User Rights'	33
The 'Mechanics' of Exceptions to Copyright Infringement	34
Contextualizing Exceptions to Copyright Infringement	36
Exceptions to copyright infringement and international obligations	36
Exceptions to copyright infringement and limitations	43
The Nature of Exceptions to Copyright Infringement	45
'User rights' as a rule of interpretation	48
User rights or privileges?	49
May exceptions to copyright infringement be waived by contract?	52
Regulatory Design Implications and Trends	55
3. In Search of Copyright User Remedies	57
Charting the Landscape of Copyright User Remedies	57
User Claims and Remedies in Copyright Law	59
User Claims and Remedies Against Restricted Uses of Copyright Works	62
Based on Breach of Contract, on Sale of Goods, or Consumer Law	62

Restricted uses fall within the exclusive rights of copyright holders	66
Restricted uses fall within the exclusive rights of copyright holders and are allowed by law under certain conditions	67
The exceptions to copyright infringement are mandatory (may not be waived by contract)	68
The exceptions to copyright infringement are non-mandatory (may be waived by contract)	73
Restricted uses outside the realm of the exclusive rights of copyright holders	74
User Claims Against Restricted Uses of Copyright Works for Breach of Obligation of Good Faith or in Tort	79
Goods and Services	81
Filling the Void of Copyright User Remedies	83

PART II RETHINKING TANGIBILITY AND INTANGIBILITY

4. Redefining Goods, Services, Sales, and Licences	89
Misconceptions About Tangibility and Intangibility in Defining Information Products	89
Tangible goods, intangible services, or <i>sui generis</i>	93
Ripple Effects on Sales and Licences	98
The Properties of Information Products	101
Individuality and scarcity	102
Physical control and exclusivity	103
Storage and permanent access	104
Movability	105
Power of transfer	105
The Diminished Importance of the Physical Object	106
5. First Sale or Exhaustion Doctrine	109
A Limitation to the Scope of Copyright	109
Justifications Underlying the First Sale or Exhaustion Doctrine	111
The Shrinking Application of the First Sale or Exhaustion Doctrine	116
The thorny question of digital exhaustion	117
The requirement of a physical embodiment	117
Assessing the legal and normative arguments for the requirement of a physical embodiment	120
Reserved acts to be performed in the context of digital distribution	123
The commercial practice not to sell copies	124
The (Ir)relevance of First Sale or Exhaustion Doctrine	127
6. Digital Locks, Physical Objects, and Immaterial Works	129
A Paradigm Shift for Digital Copyright Users	129
Technological Protection Measures and the Search for Balance in Copyright Law	130
International obligations	130

Implementation of technological protection measures at national level	133
Link between copyright infringement and contravention to technological protection measures	136
Prohibition against circumvention of access controls and not copy controls	140
Setting requirements for technological protection measures	141
The constitutionality of technological protection measures	143
From Immaterial Works to Physical Objects	144
The Shift from Possessing Copyright Works to Experiencing Them Through Services	148
A Silver Lining for Copyright Users?	149

PART III RETHINKING USER RIGHTS THROUGH PROPERTY, RIGHTS, AND PRIVILEGES

7. Why User Rights?	153
The Contributions of Property and Other Theories	153
The <i>Prima Facie</i> Normative Status of All Ownership Freedoms	156
The Right to Privacy	159
Instrumental Justifications of (Intellectual) Property	162
Incentive for the creation and dissemination of works	163
Economic efficiency and copy ownership	169
Natural Property Rights in the Fruits of One's Labour	172
A Pluralistic Account of Copyright User Rights	175
8. User Property, User Rights, and User Privileges	179
The Dysfunction of Copyright User Rights	179
Shaping the Contours of Copyright User Rights	180
Cohesion between copyright law, private law, and public law	180
Adjusting the balance	183
The role of technological neutrality	184
The obligations of copyright holders	187
Steering freedom of contract toward the objectives of copyright law	188
The Taxonomy and Hierarchy of Copyright User Rights	191
User-copy-owners	191
Coming to terms with licence agreements	192
Exhaustion of copyright beyond the exclusive distribution right	193
Service users	197
Public-space-users	201
From User Property to User Privileges	203
One Last Word	205
<i>Bibliography</i>	207
<i>Index</i>	225