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Foreword

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Foreword

Most of us think we are familiar with graffiti – lettering on trains or graphic images on walls that follow us as we walk by. But Enrico Bonadio’s new book on graffiti and street art opens a door to more complex and nuanced worlds of artists and their communities. The focus is on everyday creators of graffiti and street art. Built from nearly 100 interviews and hundreds of hours of observation, the book is filled with the voices of artists and vivid details of their plain air studios and interactions. Also present in the book is the author, who weaves the artists’ accounts of their practices with his voice and reactions as he experiences excitement and awe at the people he meets and art he witnesses being made. This is a special kind of book of scholarship; it is ethnographic and legal. And it is also colourful, funny, and enlightening.

In this short foreword, I could not adequately summarise the book’s rich detail, and I would feel neglectful choosing only a few artists on which to focus. I will instead highlight some of the productive tensions around which the book is framed, a kind of stage-setting for the book’s unfolding. I will also situate the book within intellectual property scholarship more generally, celebrating its methodological and reformist perspective on the study of copyright and the evolving place of copyright law in the twenty-first century.

In the United States especially, copyright law has struggled with the tension between utilitarian and moral justifications for its existence. Is it a regulation that incentivises the productivity of ‘writings’ for the purpose of producing ‘Science’ (qua knowledge) as the U.S. Constitution proposes? Does it also reward authors for their work – not their output but their labour – thereby dignifying their efforts, with a nod towards respecting what Justice Holmes in the infamous *Bleistein* decision from 1903 called ‘personality’? When these goals conflict, which prevails? The more we study authors and artists themselves (and especially the artists and authors in this book), and the more we get to know how and why they work, the less meaningful this tension in copyright law becomes. Street art is a form of artistic expression that has existed throughout human civilizations, and until recently was rarely bought and sold in an art market and was largely anonymous. It was for the public and largely transient, part of an ongoing urban conversation that, to many, was as

mysterious as it was ubiquitous. To understand the evolution and present instantiation of graffiti and street art as human expression that shapes communities and propels political momentum today is to either discard or profoundly recharacterise the standard story of copyright law's purposes. Utilitarian and moral philosophy are punchlines to the people at the centre of the book. In their place are descriptions of community, skilled practice, and survival in largely inhospitable circumstances.

Lawyers and academics often debate in copyright law the balance between individual rights of ownership and institutional prerogatives of sustainability and growth. Authors create copyrighted works of expression – books, films, paintings, software, music – and transfer some or all rights to an intermediary like a publisher, agent, or gallerist who can more effectively distribute the work to the public for maximum reach and minimal cost. The author receives a royalty or payment in exchange. This standard business arrangement is at the core of many copyright law rules and court decisions justifying their interpretation. Balancing the interests of authors, audiences, and the needs of copyright-holding institutions has been a theme in the evolution of copyright law and copying technology, such as printing technology, copy machines, computers, and online platforms. Shifting alliances and expectations has been especially complicated in the digital age as business structures rapidly change, audiences become used to on-time access, and authors persistently (and not without cause) complain of exploitation and economic precarity. In this book, we get to know the communities of artists who make and display works in public spaces as a first order of creation, largely without institutional intermediaries and digital technology; they exist largely outside the traditional market for art; and their creativity and communities have thrived and diversified over the past four decades of digital disruption. It is a lesson in survival, sustainability, and communitarianism in an era that feels increasingly apocalyptic in terms of wealth accumulation, its unequal distribution, and global democracy deficits. These artists do create and engage institutions to support their art, such as neighbourhoods of abandoned buildings made into galleries or land zoning boards. Eventually, some even directly work with more traditional institutions, such as galleries, museums, and merchandising companies. But the perception of copyright law's predominantly transactional structure is a shadow. They are not living outside capitalism, but they are defying its ideological prerogatives and working around the structures that impede them. One gets the sense reading about the street artists' successes and pleasures that theirs is a deeply meaningful life, and their experiences and perceptions are not idiosyncratic despite the surprises this book contains.

In fact, if one has paid attention to the wave of copyright scholarship over the past two decades, the voices and stories in this book may sound familiar. I and others have written about communities of creators and innovators in terms of the adaptive and insular practices that enable them to keep doing their work despite inhospitable legal rules and business structures. Some communities appear to be discrete sub-cultures, the way graffiti and street art at first might be perceived: tattoo artists, roller

derby athletes, magicians, French chefs, dancers, and comedians.¹ But look further and the studies extend to creators and innovators beyond what might seem niche: photographers, designers, musicians, knitters, and craft beer makers.² Some books are devoted to drawing more general principles from the diverse creative communities as a whole³ and others showcase chapter by chapter singular communities with the cumulative effect of a slow but certain sidelining of formal copyright law for so many contemporary creative practices.⁴ Situating the present book within this exploding field of qualitative empirical IP scholarship, we learn that we have so much more to know about IP law's misalignment with everyday practices of creativity and theories of capital accumulation. This misalignment should matter if we think creative practice is something the law should care to promote.

Studies like this book also resituate values from within the creative community at the centre of the investigation. Instead of leading with law – what are the rules and how do the communities follow, bend, or break them – qualitative empirical studies lead with the facts of lived experience and the meanings they are given by their subjects. Grounding one's method in the legal realist tradition of facts first assumes the law needs to care about these facts of the lives it governs to maintain its legitimacy. This method seems particularly apt when studying creative work on the periphery of acceptable art when copyright is supposed to be non-discriminatory and inclusive. Since the turn of last century, questioning who is an 'artist' and what

- ¹ Aaron Perzanowski, 'Tattoos & IP Norms' (2013) 98 *Minnesota Law Review* 511; David Fagundes, 'Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms' (2012) 90 *Texas Law Review* 1093; Jacob Loshin, *Secrets Revealed: How Magicians Protect Intellectual Property without Law*, in *Law and Magic: A Collection of Essays* (Christine A. Corcos ed., 2008) <http://ssrn.com/abstract=1005564>; Emmanuelle Fauchart and Eric Von Hippel 'Norms-Based Intellectual Property Systems: The Case of French Chefs' (2008) 19(2) *Organization Science* 187–201; Anthea Kraut, *Choreographing Copyright: Race, Gender, and Intellectual Property in American Dance* (2015); Dotan Oliar and Christopher Sprigman, 'There's No Free Laugh (Anymore): The Emergence of Intellectual Property Norms and the Transformation of Stand-Up Comedy' (2008) 94 *Virginia Law Review* 1787.
- ² Jessica Silbey, Eva E. Subotnik, and Peter DiCola, 'Existential Copyright and Professional Photography' (2019) 95 *Notre Dame L. Rev.* 263; Mark McKenna and Jessica Silbey, 'Investigating Design' (forthcoming 2022) 84 *Pittsburgh Law Review* https://scholarship.law.bu.edu/faculty_scholarship/1365; Peter DiCola, 'Money from Music: Survey Evidence on Musicians' Revenue and Lessons about Copyright Incentives' (2013) 55 *Arizona Law Review* 301; Kristy Robertson, No One Would Murder for a Pattern: Crafting IP in On-Line Knitting Communities, in *Putting IP in Its Place: Rights Discourses, Creative Labor, and the Everyday* (OUP 2014) 41–62; Zahr Said, 'Craft Beer and the Rising Tide Effect: An Empirical Study of Sharing and Collaboration among Seattle's Craft Breweries' (2019) 23 *Lewis & Clark L. Rev.* 355.
- ³ Jessica Silbey, *Against Progress: Intellectual Property and Fundamental Values in the Internet Age* (SUP 2022); Jessica Silbey, *The Eureka Myth: Creators, Innovators, and Everyday Intellectual Property* (SUP 2015).
- ⁴ Kate Darling and Aaron Perzanowski, *Creativity without Law: Challenging the Assumptions of Intellectual Property* (NYU Press 2017); Kristy Robertson, Tina Piper, and Laura Murray, *Putting IP in Its Place: Rights Discourses, Creative Labor, and the Everyday* (OUP 2014); Kal Raustiala and Chris Sprigman, *The Knock Off Economy: How Imitation Sparks Innovation* (OUP 2012).

counts as 'art' has been the cause celebre of historians and critics, embracing an expanding tolerance for challenging the status quo. As those on the periphery move to the centre – be it photographers in the 1880s, avant-garde artists in the 1920s, pop artists in the 1960s, graffiti artists in the 1990s and 2000s, or NFT artists today – those who study creative practices and their legal regulation learn how law rarely leads. It is largely an instrument for those in power to maintain it. And thus, reading about the adaptive mechanisms and personal and community values at the centre of these artists' lives – who at times ignore, resist, and reshape the copyright law to work for them, not against them – is a lesson in slow but successful revolution.

What are the values at the centre of the stories this book tells? There are many, but in keeping with some of the literature already cited, they resonate with inclusivity and self-determination on a community level; sustainable relationships that are only marginally structured by dominant market forces; a scepticism of static hierarchy that doesn't obviously support the community's work; attribution and recognition as a practice that indicates belonging rather than authority; and fair resource allocation that supports mutual flourishing. Listed in these general terms are values at the centre of political debates today. The seemingly 'outsider' art community on which this book focuses brings to the fore many of the critically important socio-political issues with which whole nations are struggling in an age of extraordinary creativity and innovation but also of treacherously unstable legal and economic systems.

This is not to say that studying graffiti and street art is going to solve our biggest problems of climate change, housing and food scarcity, health care disparities, and systemic racism and sexism. Wouldn't that be a treat if it could? In this brief foreword, I only suggest the study of creativity and innovation in our revolutionary age of digital technology as an opportunity to rethink the foundational assumptions on which older laws prohibiting copying were built. Where exclusivity and market priorities dominated, the artists at the centre of this book focus on sharing space, mutual recognition, and growing future opportunities. They recycle and renovate, and they think much less frequently in terms of market substitution and competition than does copyright law, traditionally construed. 'Keeping it real' and 'avoid biting' others are only some of the many pragmatic and grounded ways of thinking about their work and place in the art world. (Neither phrase in street art parlance means what you think, but even so, it's good advice!) Studies like this book demonstrate the resiliency and successes of outsider communities who defy odds and champion values many of us share. They make do and some make it big within a legal system biased towards insiders. The book's stories strongly suggest that the communities thrive because expressive experimentation and mutual support are priorities. With some redirection and reform, they could be copyright law priorities as well. This would substantially change our experience of what copyright is for and how it works. That is part of what makes the book interesting and a hopeful account of our creative future. With radical empathy for each other, even those with whom disagreements run strong, the artists in this book demonstrate a purpose of making

art under circumstances that make room for those coming along. It is an inspiration to read, not only as someone who studies artists and innovators, but as a person who hopes that our legal systems will eventually be able to better and more systematically reflect what really matters to most of us.

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PROOFS

Copyright in the Street

AN ORAL HISTORY OF CREATIVE PROCESSES IN
STREET ART AND GRAFFITI SUBCULTURES

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PROOFS

COPYRIGHT IN THE STREET

This book explores how copyright laws are perceived within street art and graffiti sub-cultures to examine how artists and writers view certain creative aspects of their own practice. Drawing on ethnographic research and fieldwork, the book gives voice to the main actors of these communities and highlights their feelings and opinions towards issues that are increasingly impacting their everyday life and work. It also touches on related and complementary issues, such as the 'gallerisation' or economic exploitation of these forms of art and the curious similarities between the graffiti and advertising worlds. Unique and comprehensive, *Copyright in the Street* brings the 'voice from the street' into the debate over the legal and non-legal protection of street art and graffiti.

Enrico Bonadio is Reader in Law at City, University of London. He teaches, lectures, and advises in the field of intellectual property law. He is editor of *The Cambridge Handbook of Copyright in Street Art and Graffiti* and *Non-Conventional Copyright: Do New and Atypical Works Deserve Protection?* Enrico is also a street and graffiti art aficionado.

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