

Diversity in Intellectual Property: Identities, Interests and Intersections BY IRENE CALBOLI AND SRIVIDHYA RAGAVAN, eds [New York: Cambridge University Press, 2015. xxii + 538 pp. Hardcover: US\$150.00]

It is true that the term “intellectual property” (“IP”) may give to the uninitiated the impression that it refers to a homogenous or unified subject matter. It is also true that not too long ago, at most a couple of decades, the then-prevailing thought leadership in IP was that in order to promote trade and to create a level playing field, a gradual harmonisation of IP rights in the world by the incorporation of minimum standards into international trade agreements was both necessary and justifiable. It is further true that the IP protection regime, perceived as a unified body of law, has become an integral part of international trade negotiations and has never been more economically and politically important than the present day. Nevertheless, the quest for a “one size fits all” regime in the IP system has increasingly been subject to question particularly in light of the fact that IP comprises historically distinct regimes of patent, copyright and trade mark law which differ greatly in terms of historical origins, policy objectives, scope of protection as well as social and commercial impact; even as we acknowledge that the rationale for protection is based primarily on theories of utilitarian incentives. Considered from this perspective, *diversity* is thus an integral and unique trait of IP that must be constantly borne in mind as well as embraced as we navigate the plethora of issues in this complex area.

This book, *Diversity in Intellectual Property: Identities, Interests and Intersections* edited by Irene Calboli and Srividhya Ragavan, is a collection of legal scholarly work that explores and examines the interface between IP and a multitude of diverse

considerations including trade, culture, the sciences, technology, religion, race, and gender with the ultimate aim of asserting that the current IP framework can and thus ought to include diversity as part of its objectives. To this end, this book provides two distinct trajectories—first, it “[offers] a different view of diversity-related issues embedded within the larger area of intellectual property by identifying areas where the current regimes of intellectual property norms either do not fully account for, or merely exclude or even neglect diverse elements” and second, it “[addresses] the extent to which protection should be given to [the] creations of minorities and diverse groups in general” (at p 7).

True to the theme of diversity and in meeting the objectives of the first distinct trajectory of this book, the editors Irene Calboli and Srividhya Ragavan are to be commended for gathering a group of esteemed scholars with deep knowledge hailing from diverse disciplines in law, sociology, anthropology, religion and culture, and the collection of their essays is organised in a total of six parts in this book.

In Part I—“Recognizing and Supporting Diversity in Intellectual Property Norm Setting”, the authors present readers with a delineation of the diversity goals and demonstrate that the inclusion of these diverse considerations within the objectives of international IP norm setting is possible and indeed has been achieved albeit in a limited fashion for example in an underserved area such as access to copyright works by the blind and visually impaired. Upon this foundation, Part II of the volume is dedicated to the theme “The Influence of Morality, Race and Ethnicity-Related Interests on Intellectual Property” and addresses more specifically the role that morality, racism and disparagement towards certain ethnic groups play in shaping IP protection citing examples in trade marks registration and patent grants. Part III is entitled “Framing Intellectual Property through the Lenses of Religions and Philosophies” and in this part, the authors dive deeply into the topic of human creativity, an important subject at the heart of the IP system of protection, and weave in lesser known insights gleaned from Jewish, Christian, Hindu and Chinese Confucian religious beliefs and philosophies in a discussion of plausible alternative IP frameworks. Part IV focuses on “Gender-Related Interests and Challenges: Feminist Theories and Intellectual Property” and considering the IP system, particularly the copyright regime, from a vantage point of feminist perspective, the authors present a range of viewpoints from arguing for the inclusion of female creativity in “slash” fan fiction and media fandom through an expansive approach to copyright fair use to the outright rejection of pornography as a work protectable by copyright. Continuing on the theme of creativity, Part V centres on “Diversity, Creative Industries, and Intellectual Property” and citing examples such as the Nigerian film industry, Indonesian art works featuring transformative uses of American comic heroes and high-end luxury fashion, the authors embark on uncovering the limits for IP protection whether in copyright or trade marks and critically evaluate the status quo. Finally, this volume of essays concludes with “The Ongoing Debate on Intellectual Property and (Traditional) Cultural Diversity”, an area that is still fraught with difficulties and disagreements between anthropologists and sociologists on the one hand and socio-legal scholars on the other particularly on the scope of protection to be offered to intangible cultural heritage by IP law.

One major contribution of this volume of essays on IP and diversity that is worthy of special mention (without displacing the importance and contributions of all of the

other learned writings found in this collection) is, in my opinion, the discussions in Part III—“Framing Intellectual Property through the Lenses of Religions and Philosophies”. Admittedly, the interface or inter-relationship between IP and religion is not a particularly obvious one at first blush. However, through the four chapters in Part III, readers are exposed to a whole new perspective that is generally not part of the conventional IP discourse and is perhaps often overlooked. In “Shabbat: A Diverse Perspective on Human Creativity” by Roberta Rosenthal Kwall, readers may be pleasantly surprised to learn that the ancient Jewish tradition of observing Shabbat informs our understanding of human creativity and God’s plans, and we are further invited to ponder over how this new understanding aids in the way we think IP laws are to be shaped. Margo A Bagley’s piece “Grant Me Justice against My Adversary: What Parables Can Teach Us about *Organic Seed Growers & Trade Assoc v Monsanto Co*” presents the issue of the importance of preserving “biodiversity” (a gift from God, the creator of all kinds of diversity) and the need to reconsider the inclusion of greater objectives for example that of moral utility (far beyond that of merely providing incentives for innovation) in the patent system, by drawing an analogy between the parables taught by Jesus in the Holy Bible and the legal actions levied against farmers for infringing patents on genetically modified crops. The remaining chapters in Part III on “Intellectual Property in the Ancient Indian Texts” by Prabha Sridevan and “Intellectual Property and Confucianism” by Peter K Yu draw on the wisdom of two ancient civilisations, the Indian and the Chinese, to offer insights into the inquiry of whether the Western construct of IP protection is compatible with Asian philosophies and culture and thus, whether in the consideration of fundamentals such as “what is IP” and “how it should be protected”, a mindset shift is necessary in the future of IP reforms. However, a noticeable absence in this collection of essays in Part III is a chapter on Islam and its relationship with IP. Islam is the second-largest religion with about 1.7 billion followers (or 23% of the global population) and is considered the fastest-growing major religion in the world, and a discussion on IP and the interface of religion in this part of the book would be more complete with a reference to Islamic beliefs and traditions. The editors could not have missed the inclusion of such an important contribution from this area and indeed, a chapter discussing the relationship and impact of Islam on IP was part of the original plan of this book project. Unfortunately, due to unforeseen circumstances, this important chapter on Islam and IP did not make the publication dateline. Having said this, it should be emphasised that this observation is not meant as a criticism and does not in any way negate the invaluable contributions of this part of the book. Instead, this void creates an opportunity for the editors and publisher to consider the possible publication of a dedicated *ad hoc* edition on IP and religion in which the multitude of issues arising from the major religions of this world may be deliberated and discussed amply both in terms of breadth and depth.

Another diverse consideration which may also be often overlooked in a conversation on IP frameworks is that of gender-related interests. While showcasing the array of feminist theories and their relevance to IP, the editors and authors in Part IV—“Gender-Related Interests and Challenges: Feminist Theories and Intellectual Property” also seized the opportunity to “address the extent to which protection should be given to [the] creations of minorities and diverse groups in general”, the

second distinct trajectory of this book (at p 7). In “Feminist Aesthetics and Copyright Law: Genius, Value, and Gendered Visions of the Creative Self”, Carys J Craig challenges a fundamental tenet of copyright law, which is that the current system of protection is aesthetically agnostic since it does not take into consideration the artistic quality of an artistic work, and argues that much of the fundamentals in our current copyright system are drawn from the notion of Romantic aestheticism. For the feminist theorist, this further supports the argument that there is basis for a relook of our present copyright system through an interdisciplinary lens taking into consideration in particular, a diverse interest of feminist aesthetics insights. Conventional and accepted thinking on the construct of our present copyright system continues to be challenged in Rebecca Tushnet’s piece on “The Romantic Author and the Romance Writer: Resisting Gendered Concepts of Creativity” and readers are asked to embrace “sometimes derided forms” of creativity such as romances and fanworks so that we “would understand creativity differently and more accurately” (at p 314). Continuing on a similar theme of fan fiction, Sonia K Katyal in “Slash/ing Gender and Intellectual Property: A View from Fan Fiction” offers readers an alternative view of IP and the creation of cultural commodities in the form of feminine gendered slash fan fiction and “the power of the audience and the power of participation” in the creative process (at p 338). In all of these discussions, the authors critically assess how the fair use doctrine has been applied to give protection to works of value to society as a whole such as parodies and satires and argue that through an expansive approach to the doctrine of fair use, feminine gendered works like fanworks and slash fan fiction could also be similarly protected as works of transformative uses. Finally, in “Copyright Law and the Commoditization of Sex”, Ann Bartow takes readers through an evaluation of (at p 337):

[A]n unconventional area, namely, the impact of copyright law on a category of works that heavily relies on human bodies engaging in a fairly narrow range of physical interactions that may result in endangering or damaging the ‘performers,’ who are disproportionately female.

This stellar piece of academic writing reminds readers of the harmful effects of pornography and makes the strong argument that our present copyright system must look beyond economic incentives to dis-incentivise the creation and to reject the protection of harmful pornographic works.

It is probably true that readers are left with the impression, after they have turned the last page, that this book brings to the table more questions and issues pertaining to the present IP framework than solutions to address these issues. Nevertheless, it is without a doubt that readers would have come away from reading this book with a heightened awareness that although IP may have its roots in the law, it has truly branched into other areas including sociology, anthropology, religion and culture, a fact which policy and law makers ought to pay attention to in their ongoing work of IP norm setting. Upon this heightened sense of awareness, it is hoped that further and more meaningful conversations on IP law and protection will ensue as we steer towards a more inclusive, and a better, world.

Although this is a voluminous book which demands a substantial amount of time on the part of readers to get through all of its extremely useful and valuable content,

the selection and organisation of this volume of essays allows readers to apprise themselves with a quick and general understanding of the range of issues at hand and then pick on areas which appeal to their interests to fully immerse themselves in the richness of the arguments presented, thus achieving both breadth and depth in the study of this subject matter. In the process of writing this book review, I have done exactly this. I have not only enjoyed reading this fine piece of work but also benefited greatly from the thought leadership of a stellar group of IP scholars. I would strongly recommend the addition of this book to your library collection of IP works.

SUSANNA H S LEONG

Professor

NUS Business School, National University of Singapore