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BOOK REVIEWS

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INTELLECTUAL PROPERTY LAW AND GRAFFITI: GLORIFIED VANDALISM OR A LEGITIMATE CULTURAL MOVEMENT?

Copyright Beyond Law: Regulating Creativity in the Graffiti Subculture by MARTA ILJADICA, Hart Publishing, 2016, r¹ Edition, 310pp, Hardcover, £56, ISBN: 978-1-84946-777-3, epub, 978-1-50990-202-6

Copyright is for losers.

Banksy in Wall and Piece (2006)¹

INTRODUCTION

Graffiti writing is a form of social expression encompassing a wide range of activities — from simple tags of identity, to scrawled expressions of protest and politics, sometimes in very rough locations. It remains a controversial and illicit form of literary expression, which despite having existed since ancient times, is considered vandalism if created without permission. This is because it is usually created in urban public space and its visibility means that it affects whole communities rather than just the creator or the owner of a tangible property? What determines whether it is wrong or right for a graffiti writer to vandalize property with that some feel has literary merit? Indeed, cities spend millions of pounds to erase its existence at the taxpayer's expense and graffiti crew are regularly sentenced to jail for causing criminal damage. Yet, since 2008 leading museums such as London's Tate Modern have curated graffiti displays by internationally renowned personalities such as Blu from Bologna, Faile from New York and Sixeart from Barcelona. Meanwhile, world-renowned British graffiti creator Banksy chooses to keep his identity secret to remain free to create his graffiti unfettered. It is important for graffiti creators to ensure their individually stylized work is highly visible and placed in prominent locations to ensure maximum exposure — this is not always welcome if the graffiti writer paints without permission, which is the norm. 'Graffiti isn't graffiti really unless it's illegal' according to one writer interviewed by the author?

¹ Banksy, Walland Piece (1st edition, Century 2006).

² M Hallsy and A Young, 'The Meanings of Graffiti and Municipal Administration' (2002) 35(2) Australian and New Zealand Journal of Criminology 165, 167.

³ M Iljadica, Beyond Copyright: Regulating Creativity in the Graffiti Subculture (Hart Publishing 2016) 30.

CONTENT

This intellectual property law issue is this: although copyright law provides legal protection for qualifying literary and artistic works, it essentially operates as a legal 'privilege' and as such, unlawful graffiti works are not deemed to warrant legal property rights and protection. Increasingly however, legal scholars such as Celia Lerman⁴ argue that copyright law should extend to graffiti works because copyright should be neutral and only be concerned with protecting expression, rather than excluding a creative work due to transgressions related to the physical embodiment.⁵ The author of *Copyright Beyond Law*, Marta Iljadica, Lecturer in Law at the University of Southampton, shares this view. She states at the outset that:

. . . this book is about a creative process and its attendant norms; it seeks to demonstrate that much of creativity and many of the pleasures of creation and belonging exist beyond copyright

The premise of her book is that despite the lack of formal copyright protection, creators within the graffiti sub-culture creators have nevertheless devised ways and means of informally regulating their creativity along the lines of copyright to protect against unauthorised copying. In other words, Iljadica's work explores how graffiti creators protect their work when copyright protection law is not available. She explains that informal rules have developed within the group (a 'code', 'morals' or 'etiquette'). For example, the sanction for breaking the rules includes partially or fully painting over or destroying another's work. *Copyright Beyond Law* offers a deeper insight and understanding of the graffiti subculture with a focus on graffiti writing (as distinguished from street art). The book presents findings from the author's empirical research to show that graffiti writers informally regulate their creativity through a system of norms that are remarkably similar to many copyright and moral rights law concepts.

In terms of structure, the book is divided into different parts called 'panels'. Panel I: Context sets out the origins and history of graffiti writing. It provides the context for the informal graffiti rules, copyright laws and an overview of the methodology which includes fieldwork, data collection and semi-structured interviews with graffiti creators. In Chapter 2, the author ably grapples with the traditional justifications for subsistence of copyright protection, creativity and the commons, as well as the concept of the public domain. A deeper examination might have included weighing up the opposing views, public policy debates, legal ethics and modern morality to enrich the analysis. The author could perhaps have drawn on discussions that more often occur in the trade mark and patent law fields, both of which regularly exclude marks or subject matter from protection on public policy and moral grounds.

In Panel II: Form, Panel III: Copying and Panel IV: Reputation, copyright and moral rights law is applied to graffiti writing and critically analysed. To evaluate the existence of an alternative normative framework, the author draws broadly on the legal literature on copyright and creativity, as well as the sociological literature on graffiti writing. Essentially, Iljadica presents a comparative analysis of the graffiti rules with existing copyright and moral rights law (especially attribution, false attribution and integrity). She describes how 'graffiti rules' have developed and explains their copyright law parallels. This includes the requirement of writing letters (subject matter); appropriate

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C Lerman, 'Protecting Artistic Vandalism: Graffiti and Copyright Law' (2013) Vol.2, No. 2 *Journal of Intellectual Property and Entertainment Law*.

Supra n[3J, A Note on Pictures.

Supra n[5], p 32.

placement (public policy and morality exceptions for copyright subsistence and the enforcement of copyright); originality and the prohibition of copying (originality and infringement by reproduction); and the prohibition of damage to another writer's works (the moral right of integrity). Precisely how the 'graffiti rules' intersect and converge with concepts enshrined in both copyright and moral rights law are clearly and succinctly studied. This is the most analytical part of the book and interesting legal issues arise. Chapter nine considers the prohibition within the subculture on damaging or destroying another writer's work as analogous to the moral right of integrity. Chapter ten, Part V: Interactions considers the issue of the reproduction and dissemination of graffiti writing by third parties outside the subculture. The author's perceptive analysis sheds light on the creation of subculture-specific commons and the limits of copyright law in incentivising graffiti writers, while noting the dearth of effective remedies for unauthorised use, copying or destruction.

In the concluding pages, the two approaches, namely the law and the graffiti rules, are juxtaposed to consider how the graffiti subculture may contribute to the potential reform of modern copyright and moral rights law. Iljadica questions whether there is room for copyright law to capture aspects of the graffiti rules in order to regulate graffiti writing as a new category of literary work. Interestingly, she suggests that potential new copyright exceptions (a form of fair dealing that allows for some copying without infringing the creator's rights) could make the public placement of works a key factor in determining whether the reproduction and dissemination of graffiti works is justified.

CONCLUSION

Graffiti writing remains a highly polarised phenomenon. Preserving graffiti writing and protecting it against unauthorized reproduction is a growing concern amongst creatives and within the graffiti subculture. Is it time for copyright and moral rights law, essentially intangible property rights, to protect certain aspects of graffiti writing? It is refreshing to read the work of an intellectual property academic who genuinely sheds light on the status quo. Just as loss of life and bodily injury have more weight than loss of property, the status quo appears to be that as a matter of normative ethics and morality, criminal damage to tangible property trumps potential intellectual property rights of graffiti writers. At the heart of ethics is a concern about others, beyond self-interest. In some cities, graffiti and street art have been legalized, within limits, and valued as a form of social expression.⁸ Contemporary policymakers now commission work for the creation of graffiti for mural projects that focus on the artistic merit of graffiti, providing creators places to show case their work. That fact that work is commissioned in the mainstream show that graffiti is increasingly recognized as a legitimate art form as well as being used in a positive way for the community. The website Legal Walls contains a database of 1470 legal graffiti mural around the world that graffiti creators can use to find a platform for their work.¹

In conclusion, this book ticks many boxes. The topic is controversial; has an impact on the wider community; has scholarly value and will ultimately be a useful resource for policy makers and the courts.

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This includes places such as: Hozier Lane in Melbourne, Australia; Warsaw, Poland; Tenov, Prague; Queens, New York and Venice, California USA; Paris, France; Taipei, Taiwan; Rote Fabrik, Zurich, Switzerland; Sydhavn, Copenhagen, Denmark; Burghausen, Germany.

*Bec <https://legal-walls.net/> [Accessed 23 June 2016].

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