

## Foreword

The past two decades have seen policy makers, academic commentators and industry experts advancing a plethora of law and policy proposals to recalibrate the copyright system. As they observe, the internet, social media and other new communication technologies have raised novel questions, posed unforeseen challenges and generated new stakeholders. In view of this transformation of the copyright landscape, reform is needed to ensure the adequate and appropriate protection of creativity. Such reform will not only enable creators to recoup the time, effort and resources invested in the creative process, but will also allow them to obtain the much-deserved rewards and recognition.

One area that scholars have underexplored in intellectual property literature concerns the protection of non-conventional subject matters under copyright law. These subject matters often lie outside the copyright system. Even when they fall within, they tend to lurk at the fringes and receive no or very limited protection.

This book examines three distinct groups of non-conventional subject matters. The first group covers those subject matters that have received considerable or growing attention in the copyright arena. Examples are graffiti artworks, tattoo designs, comedic routines, typeface appearances and fragrance formulae. Thus far, copyright disputes involving these subject matters have remained infrequent, and commentators have treated these disputes as rarities, if not oddities. In intellectual property literature, these subject matters have also raised more questions than answers. The chapters in this book are no exception. They provide helpful assessments of whether the courts or the parties have drawn the right conclusions – and, if so, whether the arguments and rationales involved could be extended to cover other non-conventional subject matters.

The second group of non-conventional subject matters comprises those having longstanding existence yet receiving no or limited copyright protection. Examples are culinary presentations, jazz improvisations, magic performances, sport moves and yoga sequences. The chapters discussing these subject matters are highly insightful because legal experts continue to question their fit within the copyright system. If they are asked about copyright protection for these subject matters, it will take them time and effort to formulate thoughtful answers. Such answers will require not only a deep understanding of copyright law and policy, but also creative legal analyses in areas that do not lend themselves to easy answers.

The last group of non-conventional subject matters includes novel issues that have slowly begun to garner attention from copyright experts from around the world. Providing cases of first impression, these subject matters are the fruits of new technological advances, such as 3D printing, synthetic biology and artificial intelligence. The chapters examining these subject matters are timely, important and of great practical value. They provide useful insights into the ongoing and future development of copyright law and policy.

Taken together, all of the chapters in this book have addressed important questions concerning the role, objectives and boundaries of the copyright system. They also bring to mind the distinction the US Supreme Court made between traditional and non-traditional contours of copyright protection in *Eldred v. Ashcroft*. Although that decision focused on US law, the Court's failure to provide additional guidance foreshadows a worldwide challenge in the copyright field.

Since the establishment of the modern copyright system more than three centuries ago, protection has been greatly expanded from books and other printed matter to cover photographs, motion pictures, architectural plans, sound recordings, computer programs and now 3D printed artefacts. What constitute ‘traditional contours’ – or, for our purposes, conventional subject matters – remains highly debatable.

In the past few decades, copyright law and policy has evolved considerably, thanks to the active and continuous demand by creators and their investors for new or increased protection. As a result, the boundaries of the copyright system have been vastly expanded to cover non-conventional subject matters that ordinarily would not receive protection. As the system continues to expand, its coverage will begin to encompass other non-conventional subject matters.

There is an irony in this seemingly endless expansion, however. What is deemed non-conventional depends largely on what falls within the convention. The more protection the copyright system affords to non-conventional subject matters, the more of these subject matters will eventually become conventional. Thus, whether intentional or not, the present treatment of non-conventional subject matters will colour the future development of copyright law and policy. The current development and reform in the copyright area will also directly influence the future protection of these subject matters.

In this volume, Enrico Bonadio and Nicola Lucchi have put together an excellent collection of articles examining the treatment of non-conventional subject matters in copyright law. Written by authors from around the world and covering laws in multiple jurisdictions, the individual contributions are intellectually stimulating, legally creative and generally fun to read. They call on us to think more deeply about the nature and scope of copyright protection, the justifications behind such protection and the interplay between copyright law and other areas of intellectual property law. They also invite us to explore the core question in today’s copyright debate: should protection be expanded – and if so, how and why?

This book has covered a wide variety of non-conventional subject matters. It has also explored many important questions concerning the protection or non-protection of these subject matters. To deepen our understanding of copyright law and policy, I invite you to join the volume’s editors and contributors to embark on an exciting and rewarding journey traversing the landscape of non-conventional copyright.

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