

The IP Law Book Review

IP Law Center, Golden Gate University School of Law

Vol. 8 No. 1 (November 2017) pp. 8-19

COPYRIGHT BEYOND LAW: REGULATING CREATIVITY IN THE GRAFFITI SUBCULTURE by **Marta Iljadica**, Hart Publishing, 2016, 328 pp., Hardcover, \$94.00

Reviewed by Zahr K. Said
University of Washington School of Law
zahr@uw.edu

In my home city in 2014, a 20-year-old provocateur and his friend launched a guerrilla art project called Rainworks, sneaking around Seattle and surreptitiously creating works of art using sidewalks as canvasses.¹ These works were created with paint and super-hydrophobic coatings which rendered them invisible until rain darkened the pavement around the art work and caused a message suddenly to “appear.” The works “disappeared” again as the concrete dried, and the paint—and thus this reappearing-disappearing act—lasted for two to four months in each work. In a climate famous for its rainy weather, the opportunities to see these works abounded, and the desire for distraction, or a lift in spirits caused by finding hidden works, had intuitive appeal. Rainworks was designed to make people glad that it was raining: sort of an anodyne idea, the smiley-face emoji version of installation art. Consider the mission: “Rainworks are positive messages and art that appear when it rains. Their purpose: To turn rainy days into something to look forward to!” The everybody-wins ethos of Rainworks’ writings is exemplified physically in its paint, which is nontoxic and biodegradable, with solvent that evaporates. Rainworks clearly aims to avoid offending; its point is not to foment revolution at the bus stop. At the same time, and in spite of its do-gooderism, its legal status as art was a little iffy: before Rainworks started working with the City of Seattle and the Seattle Department of Transportation, the project was technically illegal, a form of cheery trespass.² Claiming ownership of these works might have been difficult under U.S. copyright law, the legal domain most central to regulating art, because of the requirement that works be “fixed in a tangible medium of expression,” and perhaps for public policy reasons. (I have argued elsewhere that fixation need not be a bar to copyrightability in conceptual works of art that change in certain predictable ways like these did, though it is not certain that the U.S. Copyright Office, or indeed courts, would agree.)³

Still, Rainworks is art that started life in liminality, traced in the margins of urban textuality. Through municipal blessing, it has gone mainstream, moved to the body of the text, shifted status from illicit street art to sanctioned public art. But it

began life, at least in theory, as a crime. This is the complex status of graffiti and other unauthorized forms of street art: it may display creativity, create community cohesion, and enable individual self-fashioning through artistic expression, yet it tends to have these benefits overshadowed, and undertheorized, because of its legal status as marginal or even criminal. Through the inevitable politics that shape policy and scholarship, graffiti and its creative subculture have been, if not invisible, nonetheless not fully seen.

Marta Iljadica's new book, *COPYRIGHT BEYOND LAW: REGULATING CREATIVITY IN THE GRAFFITI SUBCULTURE* provides a thorough investigation of graffiti's role in contemporary life, understood through issues of creativity, law, and urban space. In her investigation of graffiti's subculture, she identifies a "bounded commons" that governs the attitudes and norms of the artists within it. Relying on semistructured interviews and personal observation, she identifies rules that govern and safeguard graffiti's practice as an embodied form of art, always linked to its physical environment, and undergirded by sociological, aesthetic, and moral norms. The "graffiti rules" exist sometimes in parallel with copyright, and sometimes in supplementary or substitutive form, generally there to protect the work, the practice, and the community (p. 295). Iljadica's curiosity and diligent empirical research provide copyright scholars with a richly rewarding exploration of alternative frameworks for regulating creativity. Iljadica writes that the project began with her surprise upon discovering, through a friend's offhand comment, that tagging a church or car was not considered acceptable within the graffiti subculture; she realized there were a set of hidden rules she had never seen, and had not known she wasn't seeing (p. 63).

Perhaps as a way of prompting us to a similar flash of insight, Iljadica's book opens with an engaging epigraph. "A Note on Pictures" appeared unexpectedly, rather like a Rainworks writing, and then disappeared from view as I made my way into the book. Yet its message remained in the back of mind as I read, and it came to take on deeper significance as I thought about the aspirations of the book as a whole. The epigraph is there to warn readers not to expect pictures of graffiti in the book, and it telegraphs information, between the lines, about readerly expectations; the way in which permissions operate in publishing and may sometimes constrain authorship; the care Iljadica displays for graffiti creators' creations whether or not they are copyright protected; and the deeper message behind her method. This is not a book about the content and messages of the graffiti themselves (pp. 66-67); it seeks instead to describe the attitudes toward creation, ownership, and copying that are manifest in graffiti's subcultural system. To do that, it doesn't need pictures as much as it needs readers willing to open their minds and perhaps their eyes. Iljadica writes:

[R]ather than seeing here examples of graffiti creativity outside the cultural and spatial context in which they reside, I invite you to walk the city; to seek out graffiti writing (and street art, too). See the names repeating. See the forms of graffiti creativity takes (and those it doesn't) and the places in which it is found (and those in which it isn't). None of this is an accident.

Iljadica urges readers to explore the world around them, seeking visual clues in graffiti, looking for repetitions, forms, names, and omissions. She calls readers to observational attention and, by directing them to look for things in the negative (forms graffiti doesn't take; places graffiti doesn't appear), she invites readers to imagine, to fill gaps and draw inferences. Lastly, she instructs them to trust that what they are seeing is not there by accident, but by design, part of a hidden subcultural order that many do not understand and scarcely imagine to be a vibrant artistic ecosystem with high standards of originality and ethics, as well as clear rules about how and where graffiti writers create their art. In asking us to attend to our own vision, she is asking that we begin, in effect, by opening our eyes to what is around us, to what she will later describe, quoting Anne Barron, as a world hidden from view, unseen “except as an environment for economic activity” (p. 292). Copyright's dominant stories about artistic creation and its regulation are heavily skewed towards economic frameworks, and that bias has at times kept more accurate, and more pluralistic views out of sight. Of course, more empirically and phenomenologically accurate accounts require time, fieldwork, methodological rigor, and a commitment to the value of undertaking such resource-intensive work. Happily, Iljadica has volunteered. Her book takes readers on a listening and imagining tour as she guides us through her experience of that world, showing us how graffiti writers work, what matters to them, and what shapes their community governance. Her work provides an opportunity to undo a politics of invisibility that obscures graffiti writers, their process and their mores.

Iljadica's thoughtful approach to structuring the book displays loving craft, signaled on the surface by adopting her interviewees' term “panel,” but going much deeper. Iljadica artfully weaves themes through the book, moving between empirical, historical, quasi-sociological, and doctrinal discussion in a way that rewards a linear reading. At times, those of us who publish in law review articles chafe at the format: articles can seem organized inorganically, as though programmed by a word processor's automated outline function, and one suspects (with no claims about cause or correlation) that these same articles are likely to be read instrumentally (readers may read the one relevant section, Part IV on willful infringement for instance, to the exclusion of the rest). To be clear, those of us in that publishing ecosystem may all be guilty at times of both organizing and reading in instrumental, uninspired fashion. Lawyers, and law professors, are epistemologically inclined towards instrumentalism, a hard habit to break in a field where client-oriented service, persuasive advocacy, and time-keeping norms mark the profession in particular ways. Nonetheless, that professional backdrop

makes reading *COPYRIGHT BEYOND LAW*—a work beautifully conceptualized and immanently ordered, a book meant to be taken in holistically—a genuine joy to read. The book is organized in sections, or panels, a term Iljadica borrows from graffiti writers who use it to refer to the section of a train carriage on which to work (p. 4). Each panel is further subdivided into one to three chapters that painstakingly approach the subject of graffiti from various interdisciplinary perspectives. In what follows, I provide brief summaries and comments on each panel.

In her opening panel, “Context,” Iljadica historicizes graffiti, and situates it in the framework of copyright theory. Chapter 1 provides a helpful history of graffiti’s development, a working definition of graffiti (and its relationship to street art and public art), and observations about a particular location (London). She explains some of the characteristics of the graffiti subculture, providing vivid snapshots of why and how graffiti artists create. Iljadica captures the sense of exhilaration writers may feel upon tagging a train, or achieving otherwise difficult artistic feats, and she acknowledges the legally risky, if not downright illegal nature of her interviewees’ chosen art. Iljadica positions the practice as liminal but not negatively so. By contrast, much of the work in this area categorizes it as though its illegality were presumed, or a core characteristic of it; Iljadica refers to this as “normativity against graffiti writers” (p. 65).

In the second chapter, “Copyright, Creativity and Commons,” Iljadica summarizes the utilitarian view of copyright’s purpose, as well as existing critiques of it. Her assessment is both sweeping and concise, a valuable summary of the scholarly debate for those new to it. This section also makes a contribution in its own right for those in our field who have long felt stifled and perplexed by the dominance of the economic view and in search of a more heterogeneous view of copyright, one based on values and exogenous reasoning than on economic theories and endogenous assumptions. Iljadica points out that “[a] noted flaw of the law and economics approach in justifying copyright is precisely its inability to explain *why* encouraging creativity is a social benefit in the first place” (p. 35). Her assessment of the flaws of law-and-economics-style utilitarianism may help explain why qualitative empirical research is so important. By attuning researchers to what matters within a given creative community, we can ask and answer better questions. By uncovering what artists actually do, and think, and feel, and need, we can consider regulation of creativity from a range of perspectives and with more accurate information that tracks practices and attitudes in the world rather than hewing to an abstract, theoretical model of what a rational actor in a given situation does to maximize her interests.

Iljadica builds on important scholarship by Betsy Rosenblatt and Estelle Derclaye that suggests the importance of belonging and happiness respectively to human flourishing. Turning to other researchers (Julie Cohen, Jessica Silbey, Rebecca Tushnet) who have explored creativity and why creators create, Iljadica cites love, esteem, play, pleasure and other non-property-oriented benefits that have no

obvious place in a copyright world structured by commodity culture and market-driven thinking. More radically still, perhaps, Iljadica suggests we could recalibrate copyright protection in order to maximize happiness rather than an optimal balance of incentives and access (p. 39). In other words, Iljadica does not just critique the dominant market-centered philosophy underpinning copyright. She advocates for its wholesale reorientation around ethics and empirics instead of “the fallacious idea of progress” (p. 39). She turns to the idea of a “bounded commons” for graffiti writers to unite the importance of physical space with the “library of styles” they collectively govern, in an intellectual commons that exists outside copyright law (p. 49). The graffiti writing community has an incentive to participate in the norms of the commons because membership matters, and those outside the group will be treated differently. Their participation in graffiti writing, and compliance with graffiti rules becomes “a social practice of commoning” (p. 55, internal citation omitted).

The third chapter of this Panel shifts gears into a more colloquial tone as Iljadica tells the story of her research design and experience. She conducted 29 formal interviews and analyzed them following grounded theory practices. She supplemented these by conducting extensive supplementary research and with her own fieldwork, traveling through the city and other cities. 18 months into a qualitative empirical research project studying craft brewers in Seattle, I must say I found this section especially gripping and impressive: this kind of work is a labor of love, and it requires a certain amount of both faith, and courage. Like Iljadica, I eventually had to move from reading to practice, jumping into action at a certain point because there is no substitute for *doing* in this arena. Her discussing of taking sides was especially valuable; I found myself taking a side in interviews quite naturally, for some of the same reasons Iljadica tells us she did (p. 73). Still, I often wondered what an ideal calibration looked like. The empathy and engagement with a particular subculture can be a genuine and also helpful stance to strike even if it does not pretend to achieve “objectivity,” or perhaps precisely because it doesn’t. Iljadica’s work in this area is unique in its focus on illegal subcultural activity, and the methods section was interesting to read for the complexities that aspect introduced. Ultimately, I wondered about some issues that I did not see discussed at length, including the gender, age, and ethnicity of participants. Is graffiti writing macho or masculinist (as I would speculate) and what are the ways for girls and women to participate, if so? What are the class and other identity factors that make belonging to this community easier or harder? Iljadica notes her own positionality as an outsider (p. 68) under suspicion (p. 70) and that being a woman generally might contribute to that outsider status (p. 71). I wanted more discussion of these factors, and how they created both norms of inclusion and exclusion that might shape the graffiti subcultural commons.

The book’s middle sections (panels 2, 3, and 4) all juxtapose copyright rules with the graffiti rules Iljadica identifies in her empirical chapters. Her aim is to map departures, adherence, and various misalignments between the two regimes. Panel 2 is about “the relevance of form and placement to creativity,” but it is also an

exploration of graffiti's status in the eyes of copyright law and its subject matter requirements. Chapter 4 presents an ontological inquiry into what counts to make certain activity be considered art, or original, or indeed, a unit of work that can and should be measured as such under either the graffiti or copyright paradigms. The juxtaposition here helps denaturalize copyright law: there is nothing particularly necessary about the lines it draws, and at times, those lines will not map well onto a subculture or practice.

Additionally, Iljadica provides helpful background for this and other American readers, allowing them to follow a few of the doctrinal divergences between U.K. Copyright Law and EU Copyright Law (which divergences may take on additional significance given BREXIT). She is especially helpfully in discussing the paradox of graffiti: it might be doubly copyrightable in some instances (as literary work *and* as visual work under the Copyright, Design and Patents Act 1988 ("CDPA")); but it may be uncopyrightable --either on the grounds that it is a single word, name, or short phrase (pp. 95-96), or on public policy grounds based on the theory that if placed in such way that it creates civil or criminal liability, perhaps copyright ought not to place a stamp of approval on it through legal protection (pp. 102-103).

The third panel centers on copying. Chapters 6 and 7 analyze copyright's originality and authorship doctrines, as well as their counterparts in the graffiti rules. Iljadica catalogs ways in which authorial choices matter in both domains, and contrasts their standards for originality. Her treatment of authorship and joint authorship was brief but illuminating, and suggests the need for continuing work on how collaborative subcultural creativity governed by norms misaligns with formal law and may be chilled by regulation, thus suppressing socially beneficial expression. Iljadica demonstrates that this misalignment holds true with respect to reproduction, which copyright law paints in very broad brushstrokes but which subcultural communities like this one tend to treat in much more nuanced and variegated fashion. Graffiti writers think of some copying as derivative but some as necessary and helpful, and the qualitative nature of the copying and the works may matter (pp. 163, 182). Relatedly, the inability of the lay eye to discern differences in graffiti writings may cause further difficulty in grafting the law's concept of reproduction onto the graffiti rules (p. 163).

A minor point of confusion for me may lie in a terminological choice. Throughout the book, and in these middle sections, there occasionally appeared to be some slippage between "rules" and "norms" (p. 3, for instance, uses graffiti rules and norms interchangeably but elsewhere there appeared to be a difference between the two). Norms, as I understand them, are informal rules that derive from a community's practice and beliefs, backed by a sanction. To the extent no sanction exists, then behaviors could be caused by reasons other than compliance with norms, and statements of community values cast as norms could be merely precatory aspirations or statements of belief, with no teeth. The reasons graffiti writers choose to adopt original styles, or choose to write in certain places, could

of course be due to a norm against biting and other graffiti rules, but these reasons could also have to do with the desire for fame, the sense of thrill and risk, and the desire to make a mark in a hard-to-reach highly visible area, for the bragging rights and sense of achievement. If sanctions operate forcefully, other reasons may be present, but as long as the sanctions are meaningful ones, we would normally presume that they matter to community members, and contribute to shaping behavior. Because Iljadica notes that “graffiti writers recognize but do not always enforce, norms that demonstrate striking similarities and telling departures from copyright rules,” I wondered whether I understand norms in the same way she does (p. 4). Insisting on a distinction between them helps avoid behavioral reductivism, or a collapse between practices and the reasons behind them, as Iljadica undoubtedly knows. For this reader perhaps, the distinction could have been made slightly clearer, perhaps by defining those two central terms more finely. To the extent that behavior is prohibited by norms, or perhaps unavailable or unattractive for other reasons, it may become important to know. When Iljadica writes of compelled forbearance of IP rights, for instance (p. 61), the implication is that would-be plaintiffs *cannot* seek legal remedies for copying of their own illegal works. But would they if they could? In the area I study, there is a forbearance norm under many circumstances; that of course tells a different story. The point may be a minor one, but the norms/rules distinction helps sort the reasons for decisionmaking about creativity and law. Ultimately, Iljadica’s larger points concern the interplay between graffiti rules and copyright rules, and those stand regardless of this question of terminology and the intended distinction between norms and rules.

The fourth panel discusses creators’ reputational interests, and the means of protecting those available under graffiti subculture norms, and copyright (or trademark) law. This discussion is especially interesting for American readers, whose copyright system is well known for rejecting most forms of moral rights like those that, in other copyright regimes, protect reputation through rights of integrity and attribution. To the extent that UK copyright law aligns in some respects with what graffiti artists want, it does so in some instances through moral rights that the U.S. copyright law largely excludes from its system. I am not here advocating for moral rights in the U.S.; my point is both less prescriptive and less sure that moral rights help more than hinder. However, it should give us some hesitation in this country as empirical scholarship continues to show that authors and artists may not be getting what they need from U.S. copyright law, but might be able to get more of that if moral rights were available through law. Of course, Iljadica’s compelling study demonstrates that norms play an important role, and in some, or many cases, their availability may be better and cheaper than the strongest moral rights available at law (p. 291).

Iljadica also shows how evaluation of the work’s merit plays a role in graffiti’s subcultural governance norms. This kind of value-definition is typically outside the scope of copyright law, which at least nominally purports to strike a position of aesthetic non-discrimination. Interestingly, the graffiti rules here track the

intuitive position of many subcultural communities; aesthetic valuation is fine if it is controlled by and within the community, for the purposes of reputational advancement or other opportunities. Ijadica's work helps show that the point at which aesthetic valuation becomes a problem is when courts are in charge of it, and empowered to award or withhold property rights on its basis.

The book's final panel features a chapter of suggested reforms for copyright, and a stirring conclusion about the jurisprudential stakes of truly seeing graffiti for what it is, and can be, in the larger context of copyright's regulation of both creativity and public space. *COPYRIGHT BEYOND LAW* allows us to shine a light on copyright's internal structures and biases, and perhaps consider reforms Ijadica lays out. Yet she cautions against using the study instrumentally to improve copyright; her suggestion instead is to allow it to inform a more pluralistic, less hegemonic discourse about creativity, and its connections to community and space (p. 300).

How one reads graffiti is a function of contextual clues and environmental factors; artistic reception is socially constructed. Yet graffiti may correlate with factors in the lived world that scrambles its meanings for many who see it. What makes a varsity letter jacket "code" one way and a hoodie code another way, for those who see them on a young man walking down the street? What work do other factors (race, age, size of the wearer) do to inform the way these items are seen, and what are the architectural and social features of the landscape that embeds and encodes graffiti? What do these clues do to shape policy discourse around graffiti? One has only to consider Rainworks, discussed above, for an example of how policymakers might talk about graffiti, but for many complex reasons including class, race, and gender, usually don't. The discourse about graffiti, by many academics and policymakers alike, comes heavily freighted with assumptions about morality and aesthetic value.

A great deal of writing has explored graffiti as an urban phenomenon, though regrettably much of it links graffiti to crime or urban troubles, framing it as one among many indicators of decline. This version of discourse about graffiti, at least in the United States, reinscribes the discriminatory effects, and biases, of an often-unjust, broken culture of criminal justice and mass incarceration. Some scholarship does celebrate graffiti's capacity for community-building, beautification, and individual self-fashioning, even when this art is unlawful, though less of such work than one might hope. Yet none has offered an extended examination of graffiti as a subcultural activity that can contribute rich insights to IP scholarship, which, with its core interests in theorizing and calibrating the regulation of creative activity, ought to take notice.

For Ijadica, graffiti is not a symptom of the "broken windows" problem, signaling urban neglect and lumped in with activities such as public urination, intoxication in public, and other expressions of lawlessness (or sometimes simply poverty) that are taken to be urban failures of some kind. On the contrary, graffiti

reflects engagement with the territory, and functions as a means of identifying people's belonging to and within that place—note Iljadica's own sense that graffiti is a link to a person, making a city feel safer to her (p. 75). Iljadica's book demonstrates a commitment to taking graffiti seriously on its own terms, which includes understanding what sets it off from street art, and when (she mentions the “blurred line” between them often). Iljadica discusses a “wide... gulf” between graffiti and street art, and it may be that the distinction between the two forms of art tracks to some extent their different treatment; graffiti may be cast in negative terms, and street art might be cast more positively, more like art than merely signatures or territory-markings (to adopt some of the stereotypes about both). To see graffiti cast here as a form of art about reputation, visibility, and the lived landscape—as well as risk-taking and resistance—is a refreshing change.⁴ Iljadica's work will help conceptualize graffiti in more positive terms, and her incisive interdisciplinary analysis will, I hope, advance a conversation among scholars of art, sociology, cultural geography, and law.

Notwithstanding this rehabilitative ethos, the book grapples with graffiti's often illegal status: it affects whom Iljadica could interview, and created some anxiety discussed in Chapter 3, about the modes and ethics of her interviews. This marginal status is one the practice of graffiti continues to experience, made all the more visible perhaps by the growing popularity of certain kinds of (sanctioned) street art and the overlaps between artistic communities who participate in both. The Wynwood neighborhood of Miami comes to mind: a remarkable collection of art, including street art, public art and graffiti, graces many walls and surfaces, spanning over twenty city blocks. Maps legitimize the collection as tourist destinations, and as a collection that coheres, too.⁵ Yet within that community, even those artists who do both graffiti and street art, remain anonymous for fear of arrest—some have been to jail and prefer to stay out.⁶

Iljadica's study tees up many rich lines of future inquiry. Her sounding notes on the market-oriented assumptions of copyright and the commodification of art have, for me, lasting resonance. A question for future empirical and theoretical work on graffiti writers to take up is the effects of the commodification and mainstreaming of forms of street art. Will graffiti as kitsch, as brand, as meta-signature, coopt graffiti as self-expression and subculture? Will graffiti writers actually find more legitimacy in their work based on the increased legitimacy of these outdoor tableaux and the sense that the urban landscape is available for artistic engagement? Is the album of snapshots Iljadica has taken going to change, and if so how? She refers to the graffiti rules as dynamic, not static. IP scholarship has not done enough to study the conditions of norm-making, and how market pressures may force changes in norms that might push artists either further into norms, or out of norms and into formal law. She talks about how graffiti is an act of resistance that reclaims urban space from corporate ownership (p. 53), drawing on theories of space and the city by Georg Simmel, and Henri LeFebvre. For both of them, the scholarly understanding of space required accounting for individual, phenomenologically inflected experience while also grappling with social

relations structured by modernity, capitalism, and industrialization. Read at a broad level, both were concerned in various ways with the everyday struggle of the human against the social machinery of the system, shaped as it was by economic and political power. Ilijadica writes that “space is socially produced, [hence] the interpretation of laws, including copyright law, also actively *produce* space” (p. 295). In calling the attention of copyright scholars to its role “in producing public space,” she shows how graffiti highlights the sociopolitical dimensions of that role (p. 288). The individual, and the subculture, struggle to resist, and engage with, and reclaim, the world around them. Graffiti is at once an opening salvo, and a response, full of defiance, that creates space for a different artistic discourse, and a different lived experience in the city.

As street art and graffiti have gained status in the worlds of art and fashion, graffiti has taken on a commodity aspect. There have been numerous instances in which designers have used graffiti artists’ work without their permission, or following failed attempts to negotiate a license. The logic of the commodity is also the logic of the law, of property, and of the right to exclude. In litigation that has predictably followed these unauthorized uses, a rhetoric of commodification and ownership is visible, and this rhetoric is what wins IP lawsuits: it’s a necessary ingredient in most complaints.⁷ If it is merely rhetorical, reflecting compliance with legal pleading requirements, there may be nothing more to say about it. But if these lawsuits, and their theories of harm, reflect more than rhetoric, might it be that copyright, and IP law, will work to produce a different kind of public space, perhaps a diminished intellectual commons? Trademark and copyright exert different pressures on rightsholders, and if graffiti writers turn to formal law, what will that look like for them, and for the creative communities around them? Graffiti may serve many purposes, from self-expression to community-building, to expressing resistance. It may also be a writer’s brand, or coopted by a large corporate brand seeking to look edgy or fresh. Its status, for law, for art, and in the market, merits future attention.

COPYRIGHT BEYOND LAW is a welcome contribution to several ongoing conversations in IP scholarship. Its discussion will add to existing legal scholarship on subcultural creativity, as well as the law-and-norms and negative space scholarship. In particular, the norms scholarship at times suffers from an anti-IP bias, or an insistence on viewing the world through a negative-space/low-IP lens. Here, Ilijadica is careful to emphasize that the existence of robust non-legal norms need not necessarily mean “no ‘rules,’ [through law] but rather, ‘better rules’; rules which make room for and reflect that which copyright, because it cannot, does not” (p. 295). She takes the counterintuitive tack that “the study of alternative copyright norms” among graffiti writers “provides support *for* the continued existence of copyright, albeit in an occasionally modified form, rather than for its wholesale abolition” (p. 285). In this nuanced approach to mapping copyright and graffiti rules, Ilijadica avoids the problem of all-or-nothing approaches to norms, and provides a model, consistent with intellectual or knowledge commons frameworks, of communities in which informal governance

and formal regulation can coexist, and perhaps should. The merits of this project are many, in its insights about graffiti writing and copyright law, and in the persuasive way Iljadica reframes both.

COPYRIGHT BEYOND LAW will provide helpful comparative perspective for those U.S. scholars of copyright and subcultural creativity who may find themselves with a myopically domestic focus: Iljadica's work provides much-needed comparative analysis with important implications for assessing the proper role and need for moral rights. Looking outside legal literatures, this work also contributes to the larger scholarly conversation on graffiti (and street art), with a welcome thumb on the scale that weighs the value of graffiti as a salutary sociocultural practice (instead of the normative framing of graffiti as evidence of urban decline and criminality). Finally, I think a substantial contribution of this book is to add normative heft to the collective and growing body of scholarship by other qualitative empirical researchers in IP: the excellence of this book, and its insights, call for more work of this kind. Iljadica notes copyright law's "shortcomings in recognizing the process-oriented nature of creativity and the space in which it occurs" (p. 288). It is only through qualitative study of the process itself, as it is lived by its participants, that we can map the community's practices, attitudes, and norms. Iljadica's epigraph could be doubly read: first, it is as an invitation to develop "graffiti sight" in walking through the city, a flaneur with graffiti on the brain. But it could be read at another level as impelling us, urgently, to travel through our territories, looking in a new way for different kinds of signs and omissions, imagining different kinds of evidence, and opening ourselves to a different kind of scholarly vision.

ENDNOTES

¹ Rainworks, <https://rain.works/story/>

² Matt Hickman, "Seattle's Hidden Street Art is Only Revealed After a Good Soaking Rain," (Mother Nature Network, Narrative Content Group, May 20, 2016), <https://www.mnn.com/lifestyle/arts-culture/blogs/seattles-hidden-street-art-only-revealed-after-good-soaking-rain>

³ Copyright's Illogical Exclusion of Conceptual Art, 39 Colum. J. L. & Arts. 335 (2016). Iljadica refers to a debate over whether fixation improperly excludes certain forms of art on p. 135 n. 68.

⁴ See, e.g. Celia Lerman, Protecting Artistic Vandalism: Graffiti and Copyright Law, 2 NYU J. Intell. Prop. & Ent. L. 295 (2013). Even pieces about the very idea of graffiti's rehabilitation as art in its own right seem to frame their arguments around this starting point. Marisa A. Gomez, The Writing on Our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism, 26 U. Mich. J.L. Reform 633, 634 (1993) (internal citation omitted).

⁵ An Online Guide to Wynwood Murals and Street Art, <http://www.wynwoodmap.com>

⁶ Ahmed Fakhr, Meet Street Artists Remaking Miami's Wynwood Neighborhood, (Rolling Stone. August 3, 2017),

<http://www.rollingstone.com/culture/features/wynwood-walls-graffiti-artists-remake-miami-neighborhood-w495766>

⁷ For examples of three recent controversies, see Lizzie Crocker, The Brooklyn Graffiti Artists Taking On McDonald's, (The Daily Beast, April 20, 2017),

<https://www.thedailybeast.com/the-brooklyn-graffiti-artists-taking-on-mcdonalds>

The Fashion Law, Graffiti Artists Are Increasingly Lawyering Up to Fight Fashion Copycats, (The Fashion Law, July 10, 2017),

<http://www.thefashionlaw.com/home/graffiti-artists-are-increasingly-lawyering-up-to-fight-fashion-copycats>

Anandashankar Mazumdar, 'Malarky' Is Latest Graffiti Artist to Sue Fashion Designer, (Bloomberg BNA, January 12, 2016), <https://www.bna.com/malarky-latest-graffiti-n57982066053/>

This last one's complaint excludes copyright because the artist, who goes by "Malarky," had not registered copyrights in his works. But the language uses noteworthy property rhetoric and reveals market-oriented thinking, given the claim that the artist is regularly approached with requests for licensing and affiliation: "Plaintiff regularly receives substantial financial offers requesting permission to use his name, art, and distinct style of design for collaboration to create, among other things, eye-catching, fashion forward apparel ... Plaintiff maintains strict control over the manner in which his name, identity and works of art are used. Plaintiff exercises careful consideration in selecting and approving products which he permits to license or use his name, identity, or persona. Plaintiff restricts such use and licensing to goods and services that are of acceptable high quality to Plaintiff and for which compensation is commensurate with the exploitation and value thereof." Mark Allsop aka Malarko Hernandez aka Malarky, an individual, Plaintiff, v. Ultracor, an entity of unknown origin, Michael F. Ball, an individual, Bandier Holdings, LLC, a New York Limited Liability Company, and Does 1 through 25, Inclusive, Defendants., 2016 WL 96149 (Cal.Super.)

© 2017 Zahr K. Said