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Foreword: Diversifying Intellectual Property

Only two decades ago, it was common wisdom that the incorporation of "minimum standards" of intellectual property into international trade regimes would herald the extension of uniform, homogenous, one-size-fits-all legal protections around the world, to the advantage of the United States and those favoring certainty in commerce, and to the detriment of other countries, particularly those considered to be "less developed." Lamenting this state of affairs was a widespread and predictable activity, particularly in the legal academy, where any suggestion of diversity in intellectual property would have been considered nostalgic, if not risible. The essays in *Diversity in Intellectual Property* indicate just how much has changed – in international and domestic law, in global and national politics, in transnational fields of advocacy, and in the legal academy itself – to make intellectual property law and scholarship the dynamic field of differences it has become.

Scholars of intellectual property diversity share affinities with a few anomalous ancestors. Early critics of copyright argued that this field of law needed to be considered a dimension of cultural policy, trademark scholars drew attention to the ways in which ostensibly commercial symbols shaped political speech, and historians of patents explored the particular social conditions under which allegedly general criteria for innovation were actually forged. Even economists historically acknowledged that countries at diverse stages of development needed to develop forms and degrees of intellectual property protection consonant with their distinctive industrial needs; intellectual property issues also historically intersected with issues of competition and the desirability of less concentration and greater choice in domestic markets. More belatedly, in the long-overlooked field of marks indicating conditions of production (collective and certification marks, denominations, appellations and other forms now referred to as geographical indications), we now understand that even within Western intellectual property traditions, protections *against* alienation from collective traditions of practice were

encompassed. The recognition of diversity within Western legal traditions should not be discounted.

Still, the range of normative contexts within which intellectual property is currently understood is unprecedented. Indeed, one could argue that the fi eld is increasingly imbricated – politically, if not neces-sarily juridically – in nearly all fi elds of international human rights law and practice. Issues of substantive rather than merely formal equal-ity have also slowly made their way into academic and political conversa-tion. Intellectual property is now considered in relationship to principles of environmental sustainability, access to knowledge and means to sustain health, the civil rights of minorities, the social rights of the disabled, rec-ognition of indigenous peoples' cultural heritage, equality of opportunity for creator groups, security of subsistence livelihoods, food sovereignty, and the maintenance of biological diversity, to name but a few of the new global terrains of struggle in which it fi gures.

If this larger context has diversified our approaches to intellectual property, it has also diversified the agents involved in fields of policymaking, as the essays in this volume clearly attest. If the World Intellectual Property Organization has reached out to "new beneficiaries," both individual and collective, to ensure the field's continuing legitimacy, a range of new nongovernmental and civil society organizations have become more vocal and influential in voicing hopes for and concerns about intellectual property in ever widening policy arenas. If intellectual property has become more diverse as a field of policy and politics, it has also become more divergent and potentially discordant.

The scholars in this volume push further still, discovering room for differential maneuver in all aspects of intellectual property governance, whether they are directly considering issues of morality, exploring the scope for flexibilities in interpretation of global agreements, bravely addressing distributional concerns and differentials of access to intellectual property protected goods or the room created by elasticities of enforcement and the potential for differentiations in assessing liability. None of the authors are naively optimistic, but nor are they routinely pessimistic; indeed, a hopeful pragmatism is one of the volume's more salutary characteristics.

If intellectual property as an arena of scholarly inquiry has become a wider and more richly politicized field in the last two decades, so too has it become more interdisciplinary in its field of reference and its methods. As the works featured here illustrate, it is no longer unusual for legal scholars of intellectual property to do ethnographic fieldwork, engage in fact-finding missions, interview interested parties, empirically explore the workings of markets, evaluate art forms, analyze economic data, explore

technological innovations, or engage in hermeneutic inquiry. There is perhaps no other field of legal scholarship in which such a differentiated range of scholarly effort can be found, making the work of intellectual property a source of diversification on yet another significant front. The editors are to be congratulated for their work in fostering and showcasing such a diversity of scholarship.

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