Editorial

Intellectual property law regularly exerts and extends itself, challenged as it is by the enormous breadth, subject matter and indeed circumstances with which it interacts. Reform to account for changing technologies (not only in subject matter but also in dissemination) is not in itself instability in the system, but rather is the fundamental character of judgment. Reform may be both in terms of the law on the page and in the interpretation of the existing law. However, in every case, the stability of the system comes from considered and careful reform.

This issue of QMJIP brings together diverse perspectives on how intellectual property copes with not only new subject matter but also new circumstances. Looking at a variety of key intellectual property rights and proposals for reform, this issue looks at the way in which intellectual property protection might be relevant not only in managing unusual circumstances and utilization for conventional content (such as perhaps performances and orphan works), but also in applying conventional models of protection and utilization to otherwise perhaps unconventional subject matter.

It is indeed in this latter respect that Claudio Chiarolla explains the possible relevance of conventional intellectual property rights in the utilization and management of marine genetic resources. Through a careful consideration of key global regimes on genetic resources in various context, Chiarolla examines the role of intellectual property in the context of a possible new international instrument under UNCLOS and the establishment of a Global Multilateral Benefit-Sharing Mechanism under the Nagoya Protocol. The author argues that management of intellectual property must be in cooperation with the fundamental objectives of research, innovation and dissemination of science as a global public good.

Vincenzo Di Cataldo addresses the creation of perhaps somewhat unconventional circumstances (or unintended consequences) for otherwise conventional rights, namely the creation of the unitary patent. Di Cataldo examines in particular the points of weakness in the new system and the difficulty in coordinating the new with the old (namely the existing European and national patents) and argues that the change in the system raises fundamental issues of choice and access to the system for inventors, and thus uncertainty. The author proposes alternatives for the modernization of European patent law.

Alexandra Bensamoun examines the extremely important issue of orphan works, which are still subject to conventional copyright protection but for which conventional use and access might be difficult at best. Noting the objectives of the Orphan Works Directive at the European level, Bensamoun examines in detail the French law concerning digital exploitation of out-of-commerce books as an appropriate solution. Shane Burke takes the question of the copyright work to the streets in his review of *Jonathan Cohen et al. v G&M Realty LP et al.*¹ and analyses the way in which the law is beginning to account for the dynamic and experiential medium of graffiti. And finally, Phillip Johnson and Sheldon W Halpern take on the

1. Case No 13-CV-5612 (FB) (JMA) (EDNY 2013).

challenges of recognizing the work in performance as distinct from the performed in their review of *Garcia v Google*.²

Justice is indeed not a matter of circumstances, but law is a matter for them.

We hope you enjoy this rich, timely and fascinating issue of QMJIP.

Professor Johanna Gibson and Lord Hoffmann
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2. 26 February 2014 (Docket No. 12-57302) (2014 WL 747399) (all references to the Slip Opinion).