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978-1-107-03400-6 - Intellectual Property at the Edge: The Contested Contours of IP

Edited by Rochelle Cooper Dreyfuss and Jane C. Ginsburg

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## Intellectual Property at the Edge

*Intellectual Property at the Edge* addresses both newly formed intellectual property rights and those which have lurked on the fringes, unadmitted to the established IP canon. It provides a basis for studying and discussing the history of these emerging rights as well as their relationship to new technological opportunities and to the changing importance of innovation and creative production in the global economy. In addition to addressing the scope of new rights, it also focuses on new limitations to patent, copyright and trademark rights that spring from similar changes. All of these developments are examined comparatively: for each new development, scholars in two jurisdictions analyze the evolving legal norm. In several instances, the first of the paired authors writes from the perspective of the legal system in which the doctrine emerged, and the second addresses its reception in his or her jurisdiction.

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# Intellectual Property at the Edge

*The Contested Contours of IP*

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*Edited by*

Rochelle Cooper Dreyfuss and Jane C. Ginsburg



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## Editors' Preface

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In 2005 we edited *Intellectual Property Stories*, a book recounting the seminal cases in traditional intellectual property law in the United States. By examining the contemporary socio-economic conditions and the human “backstory” to the leading nineteenth- and twentieth-century cases in copyright, patent and trademarks, the book attempted to uncover the factors that led courts to structure the law as we find it in the twenty-first century in the United States. *Intellectual Property at the Edge* is both more forward-looking and more geographically encompassing. It addresses intellectual property rights that are either newly forming or, if of older vintage, had nonetheless lurked on the fringes, unadmitted to the established canon. The emergence of these rights reflects new technological opportunities as well as the increasing dependence of the economies of developed and many developing countries on innovation. Their appearance calls for a fresh look at history and an analysis of their impact on creativity.

Significantly, emerging norms do not pertain only to rights holders. As intellectual property law develops, the public's interest, in the form of new limitations on longstanding rights as well as concomitant curbs on new aspirants, also claims attention. A book about the *Contested Contours of IP* necessarily confronts the contending demands of creators for new or increased coverage and of users (whether other creators, commercial competitors or their audience) for freedom to innovate or to enjoy the fruits of intellectual endeavors. Thus, in addition to addressing the scope of new rights, this book focuses its last chapters on emerging limitations on patent, copyright and trademarks.

Because the growing prominence of new forms of intellectual property rights and limitations is a global phenomenon, we chose to examine these developments comparatively. Accordingly, for each new development, we asked scholars in two jurisdictions to describe the evolving legal norm and to consider the extent to which the development responded only to internal conditions, or instead was influenced by legal evolution elsewhere. In several instances, the first of the paired authors writes from the

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perspective of the legal system in which the doctrine emerged, and the second addresses its reception in his or her jurisdiction.

Intellectual property rights also evolve in the broader context of property rights in general. While rights in intangibles may seem more susceptible to expansion (or contraction), the phenomenon of changed contours is not unique to intellectual property. The book therefore begins with an introduction by Carol Rose, a scholar of real property, who has written extensively about how such changes occur in property regimes more generally. Like Professor Rose, many of the other contributors to this volume enjoy long-established international reputations. However, as seems appropriate to a work about emerging IP norms, several authors are emerging IP scholars whose international standing we hope this book enhances.

We would particularly like to thank Nicole Arzt for all her excellent assistance.

ROCHELLE COOPER DREYFUSS

JANE GINSBURG

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