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# FOUNDATIONS OF INTELLECTUAL PROPERTY

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UC Davis*

Jane C. Ginsburg

*Morton L. Janklow Professor  
of Literary and Artistic Property Law  
Columbia University*



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121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800  
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*RPM: This one is just for Jo*

*JCG: For George and Paul and Clara*

## PREFACE

This book is meant to provide a comprehensive yet concise collection of commentaries on the topic of intellectual property. Our goal has been to bring together the most influential writings on patent, copyright, trademark and design protection, beginning with early material from the seventeenth century and continuing into the contemporary law review literature. Because this literature continues to grow quickly, we decided on a “cutoff date” of the year 2000, however, so some very recent contributions of note will not be found among the excerpts. At the same time, each excerpt or group of excerpts is supplemented by extensive notes and questions, which typically include citations and extended discussions of more recent literature (up until our publication deadline of June, 2004). The excerpts have been very heavily edited. Given our desire to provide a comprehensive overview, and because many of the articles we draw on are quite long, the excerpts set forth here are in many cases little more than a précis of the original. While we have tried very hard to capture the essential animating ideas of each excerpt, many of the nuances, elaborations, and qualifications (not to mention, footnotes) that often surround careful scholarly work are either barely discernable or else entirely missing from the excerpts in this book. For a full and detailed understanding of an author’s argument, there is simply no substitute for consulting the original text.

Scholarship, though in many ways a solitary enterprise, takes place within a community. A book like this one brings this fact home with extra force. First, it reminds us that today’s work builds on many labors from the past—that we are part of a scholarly enterprise stretching over time and space, connected by our interest, concern, and even passion for this branch of the law. Second, at a more prosaic level, a book like this requires the permission and consent of many authors and many publishers of legal scholarship. Without procedures and norms for granting permission, and in some cases arranging compensation, a book like this would be impossible. We take this opportunity to thank the many authors, law review staff members, and other publishers, who took time to answer our inquiries and grant us permission to works over which they hold copyrights.

Finally, and in some ways most importantly, each of the editors has a support system that makes it possible to work on projects such as this book. Here we record our debt to the people who support us.

Rob Merges would like to thank Roberta Romano of the Yale Law School for originally proposing this project, and patiently waiting several

years for it to come to fruition, and also Steve Errick of Foundation Press for encouragement, enthusiasm, and editorial support. Merges also thanks Chris Swain, Kathleen Vanden Heuvel, and Susan Russell at Boalt Hall School of Law, U.C. Berkeley, for help in tracking down and digitizing various excerpts; and especially Carrie Armstrong-Ruport of the U.C. Davis Law School, for her cheerful, energetic help in formatting, editing, and typing many excerpts, all of which was absolutely indispensable to the completion of this project. And as always the Merges family, Jo, Robbie and James, was there to support, divert, indulge, and love in just the right proportions to see the project through.

Jane Ginsburg thanks Rob Merges for inviting her to participate in this project: the reacquaintance that a task of this kind requires with so many leading historical and contemporary commentaries has proved enriching and in some cases even surprising. Thanks also to Steve Errick for consistent and cheerful editorial support, and to Gabriel Soto of Columbia Law School for valued administrative assistance. Ginsburg is especially grateful to Hannah Shay Chanoine, Columbia Law School class of 2004, whose perseverance, intellectual generosity, and patient fulfillment of ever-evolving (not to say, occasionally contradictory) requests made editing the Copyright and Trademarks chapters of this book both possible and fun.

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