

NEW BOOKS

Editorial Note

CULTURAL HERITAGE LAW BOOKS PUBLISHED IN 2020

Research Handbook on Art and Law
edited by Jani McCutcheon
and Fiona McGaughey

ISBN 9781788971461

Edward Elgar Publishing, Cheltenham–Northampton 2020, pp. 464
Published: 31 January 2020

This book critically investigates the complex intersections between law and interceptions of artistic creativity. Edited by two legal scholars from the Western Australia Law School, Jani McCutcheon and Fiona McGaughey, it features 25 chapters written by 27 authors working in various areas of expertise and the practice of law and criminology in the context of the making, reproduction, and dealing in visual arts. Scholars in philosophy, fine arts, architecture, and the humanities are also represented.

While the book brings together various perspectives on how law sees visual art, and how visual art sees law, its main focus is on the intellectual property regulation of the domain of art and artistic creativity, including the preservation of street art and graffiti. Based on a vast overview of judicial practice, it covers a wide range of topics, including the regulation of colour in art, the regulation of the artists and curators' rights, the legal classification applied to artworks, artworks about abortion,

human rights and creative works, art fraud and art authenticity, art and politics, and inequality and legal iconography. Hence this book addresses a number of key questions that preoccupy practitioners, lawyers, curators, art critics, and policy-makers in the realm of the present-day, constantly-evolving artistic panorama and its challenges.

The 2003 UNESCO Intangible Heritage Convention: A Commentary edited by Janet Blake and Lucas Lixinski

ISBN 9780198824787

Oxford Commentaries on International Cultural Heritage Law
Oxford University Press, Oxford 2020, pp. 560
Published: 6 March 2020

The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage is one of UNESCO's most successful treaties, with 180 States Parties at the time of this writing. Because of its success and the volume of activity surrounding its implementation, it is necessary to engage with the practice which has accrued in the 15 or so years since its entry into force, in order to take stock of its development and try to shape its future. This commentary is therefore very timely, and edited by Janet Blake (who wrote one of the first drafts of the treaty for UNESCO in the early 2000s) and Lucas Lixinski (who wrote the first monograph about intangible cultural heritage in international law).

The volume critically analyses the treaty and its aspiration to shape the entire field of international cultural heritage law. Intangible cultural heritage is broadly understood as the social processes that inform our living cultures, our social cohesion and identity as communities and peoples. Importantly, the convention seeks to put communities, groups, and individuals at the centre of the safeguarding process, unlike other UNESCO treaties, some of which have since adapted to this idea through their Operational Guidelines and Directives (the World Heritage Convention being a prominent example). This Commentary

is written by 27 leading experts in the field from all continents and multiple disciplines. It provides an authoritative guide to interpreting and implementing this treaty and its ripple effects on how we think about cultural heritage and our experience with it as a part of our living cultures. This book is of interest to lawyers, policy-makers, anthropologists, cultural diplomacy specialists, archaeologists, cultural heritage studies experts, and above all to the people who practice and enact this living heritage.

This Commentary is the first volume in a new series, titled *Oxford Commentaries on International Cultural Heritage Law*, edited by Ana Filipa Vrdoljak as part of her UNESCO Chair on International Cultural Heritage Law. It accompanies OUP's 2008 Commentary to the World Heritage Convention (edited by Francesco Francioni, with Federico Lenzerini), and more Commentaries are to follow. Already in the works are a dual Commentary to the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* and the *1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* (co-edited by Ana Filipa Vrdoljak, Alessandro Chechi, and Andrzej Jakubowski), as well as a Commentary on the *2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (co-edited by Yvonne Donders and Amy Strecker).

This volume is also the winner of the 2021 Certificate of Merit of the American Society of International Law for High Technical Craftsmanship and Utility to Practicing Lawyers and Scholars.

Educational and Cultural Challenges of the European Sustainability Model: Breaking Down Silos in the Legal Domain María Dolores Sánchez Galera

ISBN 9783030387167

Springer, Cham 2020, pp. 283

Published: 12 March 2020

This book aims to encourage lawyers and policy makers to turn their attention to education and cultural matters, considering that they constitute a vital issue for the change of paradigm that present-day societies need today. The author of this book,

María Dolores Sánchez Galera, currently serving as Adjunct Professor at the Public Law Department of the University Carlos III of Madrid (Spain), notes that there are hints that partial attention is paid to them in international agreements and international initiatives, but there is a lack of serious engagement in these matters of an innately interdisciplinary nature.

The book examines the importance of global, systemic, and interdisciplinary analysis as methodological approaches to better understand our regional and local contexts. It suggests a new legal eco-narrative to transform societies at the operational level; one which engages educational and cultural public institutions. The book offers a new perspective on how the theory of sustainability transformation should be connected to these systemic analytical approaches for successful actions in the fields of education and culture, an area where lawyers need to become more involved. The book focuses on Europe and its main purpose is to show how the most important parts of the European regulatory puzzle are missing: cultural and education matters should be at the forefront of both present and future social transformative initiatives, together with the idea of the common good if we want to build a stronger sense of intergenerational justice in Europe and beyond. A good representative sample of European initiatives within the context of educational and cultural policy following eco-narratives and paths toward the common good is also enshrined in this book as a corollary to the analytical part. This helps offer a better perspective on how to face the educational and cultural challenges of an unfinished sustainability model.

*Intersections in International
Cultural Heritage Law*
edited by Anne-Marie Carstens
and Elizabeth Varner

ISBN 9780198846291

Cultural Heritage Law and Policy
Oxford University Press, Oxford 2020, pp. 448
Published: 20 May 2020

This edited volume responds to the current and most complex challenges faced by the international community in the realm of cultural heritage protection. It shows that international cultural heritage law is indeed a body of law whose component parts are

drawn from diverse fields of public international law. It shows how cultural heritage law has been formed and shaped by its interaction with other areas of international law, and how this interaction has contributed to international law in return.

The book, edited by Anne-Marie Carstens, Researcher at Georgetown University Law Center, and Elizabeth Varner, Director of the US National Coast Guard Museum, is comprised of 16 chapters, written by 17 scholars and practitioners. They investigate some of the primary points of intersection between international cultural heritage law and public international law: the law of armed conflict; international and transnational criminal law; international human rights law; the international movement of cultural objects and its legal regulation and the protection of cultural heritage against illicit export and import; the return and restitution of cultural objects; the protection and management of underwater cultural heritage; state responsibility; state immunity; and international criminal justice and the UN system. Hence this book demonstrates the importance of cultural heritage within various areas of public international law, and shows how cultural heritage considerations affect international law-making.

Intangible Cultural Heritage under National and International Law. Going Beyond the 2003 UNESCO Convention
edited by Marie Cornu, Anita Vaivade,
Lily Martinet, and Clea Hance

ISBN 9781839100024

Edward Elgar Publishing, Cheltenham–Northampton 2020, pp. 224

Published: 11 September 2020

This book is the result of an international research programme, OSMOSE, conducted in 26 countries on four continents and aimed at illustrating how domestic laws comprehend the notion of intangible cultural heritage. Based on a uniform research questionnaire, it represents one of the most comprehensive (if not the most comprehensive) comparative law studies so far undertaken in the field of the safeguarding of intangible cultural heritage.

The diverse contributions, by international and comparative law experts, included in this book critically demonstrate the complexity of regulatory regimes relating to intangible cultural heritage at the international, national, and local levels. While exploring the relationship that States maintain with the safeguarding of intangible cultural heritage, this book highlights the most challenging concepts, addresses the nature of community participation, and critically investigates the scope and modalities of safeguarding. First, it analyses the stance of States towards the category of “intangible cultural heritage”. Importantly, the conceptualization of this category is examined both before and after the adoption of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage. Secondly, the book approaches the issue of interactions between the legal mechanisms for safeguarding intangible cultural heritage and other fields of law. Thirdly, it explores and critically analyses the national legal tools employed to safeguard intangible cultural heritage. Finally it addresses most difficult issues of justiciability and the judicialization of intangible cultural heritage.

Through its comparative method of analysis and synthesis of empirical data, this book identifies new developments in cultural heritage law. It may thus serve not only as an essential resource for scholars in the fields of international and comparative cultural heritage law, anthropology, and cultural studies, but also as a catalyst for future research into the safeguarding of intangible cultural heritage.

The Oxford Handbook of International Cultural Heritage Law edited by Francesco Francioni and Ana Filipa Vrdoljak

ISBN 9780198859871

Oxford Handbooks
Oxford University Press, Oxford 2020, pp. 1088
Published: 28 September 2020

Although cultural heritage law is now considered as an established branch of international law, for a long time it has not had its own handbook. This extensive volume, edited by Francesco Francioni and Ana Filipa Vrdoljak, fills that gap by setting out and assessing the international legal framework governing

the protection of cultural heritage. While it is primarily focused on public international law, it also embraces aspects of private international law and comparative law. It features 39 analytical chapters, written by 41 leading experts in the field from all continents.

This very rich and comprehensive handbook offers a historical overview, analyses the substance of cultural heritage protection, and explores its links with other areas of public and private international law. Furthermore, it discusses how and to what extent cultural heritage law contributes to the formation and development of international law rules. A separate segment of the analysis is focused on procedural and institutional aspects, including the role of non-state actors, dispute resolution mechanisms, and codes of ethics. It thus covers and examines almost every field of international law relating to cultural heritage. The book concludes with an examination of regional approaches to the protection of cultural heritage (in Africa, Asia, Oceania, Central and South America, Europe, the Middle East and North Africa, and North America).

The Handbook is designed to facilitate a better understanding and implementation of cultural heritage law by tracing it from its inception up until its present-day consolidation and enhancement. Considering the analysis of the spatial and historical developments of this branch of international law, its practice and its scholarship, this book may not only serve legal scholars, practitioners, and students, but also those working in the fields of history, anthropology, and cultural studies.

Intellectual and Cultural Property: Between Market and Community

Fiona Macmillan

ISBN 9781138388062

Routledge, London 2020, pp. 232
Published: 13 November 2020

This book, by Fiona Macmillan, Professor of Law at the Birkbeck College, University of London, investigates the relationship between cultural heritage and intellectual property, and their common interest with the creative arts. In this regard it addresses one of the topical questions concerning the legal regulation of cultural heritage, with its focus on collective

or communal aspect versus individualistic and market-oriented regimes of intellectual property law. It demonstrates that the competing discourses in international legal instruments on copyright and those on the safeguarding of the intangible cultural heritage are the most evident manifestations of this difficult encounter.

The book critically explores and analyses the concepts of cultural property, intellectual property, cultural heritage, as well as those of community and market. Accordingly, it argues that cultural heritage cannot be fossilized in the past and dominated by the States and their sovereign rights to control heritized creativity, but instead should be understood as part of a dynamic and mutually constitutive process of community formation. As the market is embedded in a community, the processes of privatization of cultural manifestations on the one hand, and the protection of cultural heritage on the other need to be re-examined and a proper balance introduced to meet the needs of present-day societies *vis-à-vis* their creativity, thus diminishing the risks of cultural domination and homogenization. In this regard the book proposes “an alternative basis for expressing and controlling value according to the norms and identity of the community and not according to the market value of private property rights”. This approach makes the book a truly engaging read for everyone interested in the relationship between intellectual property law and cultural heritage law.