

Examining Street Art and Graffiti Art through the lens of Copyright law: Balancing expression and ownership

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Abstract

Graffiti is a form of street art that involves the creation of visual art on public spaces, often using spray paint or other materials. While it has gained popularity as a form of artistic expression around the world, graffiti in India faces a number of legal and copyright issues.

One of the main challenges faced by graffiti artists in India is the lack of legal recognition for street art. Graffiti is often seen as vandalism or defacement of public property, and artists can face legal action if caught in the act. Additionally, there is no clear legal framework in place to protect the intellectual property rights of graffiti artists, making it difficult for them to protect their work from unauthorized use or reproduction.

Another issue faced by graffiti artists in India is the lack of support and recognition from the mainstream art community. Graffiti is often viewed as a subculture or underground art form, and artists may struggle to gain recognition or support from galleries or other traditional art institutions.

Despite these challenges, there are a growing number of graffiti artists in India who are pushing the boundaries of what is possible in street art. Some have found success by creating legal murals or collaborating with businesses or local governments on public art projects. Others have turned to social media platforms to share their work and build a following.

Overall, while the legal and copyright issues surrounding graffiti in India can be daunting, there is also a growing sense of excitement and innovation in the street art community. With continued support and recognition, graffiti in India has the potential to become a vibrant and important part of the country's artistic landscape.

Keywords : graffiti, copyright, ownership, authorship, artistic rights

Introduction

Understanding our surroundings and processing our emotions are both aided by art in a profound way. It breathes life into our experiences and offers us a fresh perspective on life. Since the dawn of civilization, art has always played a significant role in human society serving as a medium of expression, education, and cultural exchange. Human history and art go hand in hand. Many, who are curious about human evolution into a cognitive being spend their entire careers studying simplistic cave art because of the complexity art brings along.

Art can be revolutionary or contentious. It can cause a stir; it has the potential to start constructive debates that advance society as a whole. Art allows us to examine, react to, and affect societal change. Several case studies have actually demonstrated that art in rural communities specifically can help

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boost economic growth.³Whether it's creating new forms of beauty, pushing boundaries, or inciting social change, art remains a vital part of our lives and cultural heritage.

The graffiti revolution that took place in New York City during the 1970s and 1980sexemplifies how art can be a catalyst for social change⁴. Urban youth, who felt disenfranchised and lacked a voice, took to spray-painting walls, trains and tube cars heavily as a means of expressing their anti-authoritarian viewsThe art gave rebels what they were looking for- an identity to be seen, felt and heard by everyone. It appears that this sort of graffiti-inspired art is still in existence but has undergone changes and been altered to the point where the line separating it from street art has become hazy. Street art is a close relative and the successor to the graffiti revolution and serves as a testament to how art can empower the voiceless and inspire societal change. It has a stronghold in modern, mainstream urban society but yet has obvious origins in graffiti art. While typically thought of as a genre of art that emphasises the self-proliferation of a namesake through the use of innovative, bold lettering,with spray-paint, street art knows no boundaries, often incorporating lettering but also using stencilling, painting, wheat pasting, and sticker "bombing" (making and pasting stickers) as art forms that share a similar aesthetic.

Street art and graffiti art continue to become more well-known inside renowned galleries and museum venues, although they still trail behind more established, conventionally approved art genres. In order to appeal to young consumers worldwide, street art and graffiti art styles are increasingly being utilized in mass media, from advertisements to product placement. The significance and popularity of street art are readily apparent in our daily visual culture, from the world's major metropolis to smaller, less developed rural locations. As street art and graffiti are so closely related and frequently overlap in terms of subject matter, media, aesthetic look, and location as a public art form, it is getting harder and harder to tell them apart today.

Graffiti and street art often present complex copyright issues as the ownership and control of the work are often unclear. Generally, any creative work is automatically protected by copyright law as soon as it is created. The creator holds the exclusive right to control how the work is used or reproduced. This includes unique art forms like graffiti and street art.However, when it comes to public spaces, where graffiti and street art are often created, things can become more complicated. Street art and graffiti can be considered a form of "public art," In some cases, the public space can be seen as a type of "canvas" for artists to express themselves⁵.

As a result, there may be conflicts between the rights of the artist who created the work and the property owner or local government that oversees the public space where the work is located. In some cases, the property owner or government may choose to remove or cover up the work, or even pursue legal action against the artist for vandalism.

Furthermore, there can also be issues with the unauthorized use or reproduction of graffiti or street art. For example, if a company uses a photo of a street art mural in an advertisement without permission from the artist, they may be infringing on the artist's copyright⁶.

Overall, the legal status of graffiti and street art can be complex and may depend on the specific circumstances involved. It is important for artists, property owners, and others to be aware of their rights and responsibilities in relation to these creative works. While it presents a challenge to the

³Anwar Mchenry, Julia. "A Place for the Arts in Rural Revitalisation and the Social Wellbeing ofAustralian Rural Communities." *Rural Society* 19 (2009): 60 - 70.For Indian perspective <https://economictimes.indiatimes.com/opinion/interviews/the-growth-of-indian-art-reflects-the-success-of-its-economy/articleshow/5371632.cms?from=mdr>; Chinese study Jiao, Lijuan et al. "Research on Art Intervention in Rural Cultural Construction." (2020).

⁴Zieleniec, Andrzej Jan Leon. "The right to write the city: Lefebvre and graffiti." (2017). Para 3

⁵The Copyrightability of Street Art and Graffiti: When Copyright Law and Street Art Collide." *Entertainment Law Review*, vol. 29, no. 4, 2018, pp. 116-119.

⁶Who Owns Street Art? A Legal Analysis." *Journal of Intellectual Property Law & Practice*, vol. 13, no. 1, 2018, pp. 30-41.

legal regime, what is also necessary here is to note the differences in the nature of the works co-existing.

Is it Art, Street Art, or Graffiti

While Street Art and Graffiti serve different ends, there are some similarities between the two art forms. The associations between street art and graffiti have to do with Location, Political and Social commentary, and Materials used.

Similarities	Graffiti	Street Art
Location	Outdoor -Outside walls of public and private buildings Subway car Railway box car	Outdoor - Public parks Freeway overpass
Context	Political and Social Critique	Political Social and Cultural Critique

Both famous Street artists and Graffiti artists are being encouraged by cities to visit and leave their marks as a way to create a tourist attraction for visitors. Shepard Fairey, Graffiti Artist created the “Hope” poster during Barrack Obama’s 2008 presidential campaign. While Banksy’s work has sold in the high six figures. These high-profile artists have generated collector interest in other street artists. Most commercially established artists start as Graffiti artists before bridging the gap and making the move to becoming “legit” Street artists.

Dissimilarities	Graffiti	Street Art
Commercial Intent	Refer themselves as “Writers”	Refer themselves as “Artists”
	They do not use their real names and have no interest in their works being promoted commercially. Their signature is their “Tag”	Street artists, however, are generally working commercial artists. They proudly sign their name to their murals and other works.
Materials	Spray Paint, Stencil, vinyl, eggshell stickers, clay, markers, fabric wool, and textiles	Any paints, tools, or materials
Legality	Illegal as it is non-commissioned work	Commissioned work -Legal

Legal Ramifications of Uncommissioned Artworks

It is unclear if street art and graffiti, which are more recent art forms and may or may not be limited to merely paints or drawings, can be regarded as original and creative work within the meaning of the Copyright Act, 1957. The Indian Constitution protects freedom of expression of ideas and views as one of the Basic Rights. Even when they are depicted in different artistic mediums, they are still

expressions that should be protected. Moreover, certain states do have their specific laws which recognizes these art forms as defacement of property and have some penal consequences attached to the unauthorized creation of these forms of art in public spaces. No formal legal protection has been conferred on street art and graffiti till now⁷.

If an uncommissioned artwork is created on a privately owned property, the property owner may have the right to remove the work or even pursue legal action against the artist for trespassing or vandalism. The property owner may also have the right to claim ownership of the artwork if it is considered a fixture or part of the property.

If the artwork is created on public property, such as a wall or sidewalk, there may be additional legal considerations. While public spaces may be considered a "canvas" for artists, there may be regulations or policies in place that prohibit or restrict the creation of graffiti or street art. In some cases, the artist may face fines or other penalties for violating these regulations.

In terms of copyright law, uncommissioned artworks are still protected by copyright as soon as they are created, and the artist holds the exclusive right to control how the work is used or reproduced. If someone else reproduces the work without the artist's permission, they may be infringing on the artist's copyright and may be subject to legal action⁸.

Overall, the legal ramifications of uncommissioned artworks under copyright can be complex and depend on the specific circumstances involved. It is important for artists and property owners to be aware of their rights and responsibilities in relation to these creative works.

Legal Protection and Preservation

In India, there are no specific legal restrictions on graffiti.

Nonetheless, the Indian Constitution outlines certain guidelines in this area. It is required of the State to protect every monument or place or object of artistic or historic interest declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal, or export, as they are to be observed by every citizen of India, according to Article 49 of Part IV of the Constitution, which also stated in Article 51A (f).

According to Section 57 of the Indian Copyright Act of 1957, moral rights exist in original works that are subject to copyright protection. It has been determined, based on the moral rights envisioned in the Berne Convention, that the author is entitled to seek appropriate legal remedies if the moral right of attribution and integrity in his or her work is violated. It has also been determined that the author retains "moral rights" even after giving up economic ownership of the work. Section 57 gives the author the following unique rights: (1) to assert his or her claim of authorship; and (2) to prevent or seek damages for any distortion, mutilation, or other modification of the work, as well as for any other action related to the work that would be damaging to the author's honour or reputation.

The Section's guiding principle is that damage to an author's reputation is distinct from infringement of the work itself.

Further, the author of a work has the right to assert the authorship of the work even after assignment of the copyright to the work; he or she has a right to limit the distortion or mutilation of his or her work or to seek damages for the distortion. For a contract of assignment to be valid, it must be made in compliance with the moral rights of the author of work granted to it under Section 57.

The concept of resale rights, provided under Article 14 of the Berne Convention, which grants 'droit de suite' in works of art and manuscripts by granting the author the inalienable right to an interest in any sale of the work after the first transfer by the author of the work, has been incorporated into the Copyright Act. Section 53A of the Copyright Act grants to the first owner of the right or his

⁷Legal and Ethical Issues Surrounding Street Art." Communication Law and Policy, vol. 22, no. 1, 2017, pp. 29-57.

⁸Iljadica M. Copyright beyond law: Regulating creativity in the graffiti subculture. Bloomsbury Publishing; 2016 Nov 17.

or her legal heir at the time of resale of a copyright work, the right to a share of the proceeds of resale. Such share will be fixed by the Copyright Board and shall not exceed 10 per cent.

Section 14 of the Copyright Act grants certain rights to the owner of the copyright for complete enjoyment of its right. In an artistic work, the artist has copyright over distinct activities that are set out in Section 14(c)(i) to (vi) of the Copyright Act.

The copyright owner has a private right and has the freedom to exclude others from replicating his or her work. If someone performs an act referred to in Section 14 of the Copyright Act, the copyright owner can institute a suit for violation of his or her copyright against that person⁹. However, if an artist produces any art as part of a contract for his or her services, he or she will assign his or her rights to his or her employer and will not be able to hold the legal and equitable title to the work of Art¹⁰.

The government of India has recently notified the Copyright (Amendment) Rules, 2021. In the context of authors' rights, the notified Rules are likely to enhance accountability and transparency in issues such as distribution of royalty amounts and traceable payment methods during collection and distribution of royalties. Precious artworks held by copyright societies will now be obligated to draw up and make public an annual transparency report for each financial year. These rules will indirectly help in street and graffiti art as they make it mandatory for copyright societies to maintain transparency in their functioning and to distribute royalties to their members in a fair and transparent manner. The new rules also provide for a mandatory requirement of maintaining records of all works licensed or assigned to the copyright societies, and ensuring that the authors or owners of the works receive due compensation for the use of their works. These rules apply to all forms of creative work, including street and graffiti art, and will benefit the artists who create such works by ensuring that they receive fair compensation for their efforts.

Furthermore, the obligation for copyright societies to draw up and make public an annual transparency report for each financial year will also improve transparency and accountability in the management of copyrighted works. This increased transparency will help street and graffiti artists to keep better track of their work and ensure that they receive the royalties they are entitled to.

Overall, while the rules do not directly address the unique challenges faced by street and graffiti artists, they do provide a legal framework that promotes greater accountability and transparency in the management of creative works, which can ultimately benefit these artists in the long run.

At the outset there is a dire need to suggest measures and policy implementations for ensuring rights and delineating them based on their nature of work¹¹.

Conclusion

When it comes to the copyright issues surrounding graffiti and street art, there are several possible solutions to consider. One such solution is for artists to obtain permission from property owners before creating their artwork, which can involve negotiating a license agreement or obtaining a permit from the local government. Another option is for artists and property owners to enter into a contract that specifies the terms of use and reproduction of the artwork. In addition, artists can enforce their copyright by taking legal action against individuals or entities that use or reproduce their work without permission. Finally, local governments and property owners can create public art programs that provide a legal framework and resources for artists.

Obtain permission: One solution is for artists to obtain permission from property owners before creating their artwork. This can involve negotiating a license agreement or obtaining a permit from

⁹Agarwal P. Appropriation art: Copyright infringement or fair use. *Indian J. Intell. Prop. L.* 2017;8:61.

¹⁰Bonadio E. *Copyright in the Street: An Oral History of Creative Processes in Street Art and Graffiti Subcultures*. Cambridge University Press; 2023 Apr 27.

¹¹Abhijeet K, Mitra P. Graffiti-A Non Conventional Copyright?. *Supremo Amicus*. 2019;13:145.

the local government. By obtaining permission, artists can ensure that their work is legally protected and that they have the right to control how it is used or reproduced.

Create a contract: Another solution is for artists and property owners to enter into a contract that specifies the terms of use and reproduction of the artwork. This can include provisions for licensing, royalties, and other aspects of copyright law. By creating a contract, both parties can clarify their rights and responsibilities and avoid conflicts down the line.

Enforce copyright: Artists can also enforce their copyright by taking legal action against individuals or entities that use or reproduce their work without permission. This can involve filing a lawsuit for copyright infringement or sending a cease and desist letter to the infringing party.

Create a public art program: Finally, local governments and property owners can create public art programs that encourage and support the creation of graffiti and street art. By providing a legal framework and resources for artists, these programs can help to reduce conflicts and promote the positive impact of public art.

Overall, these solutions can help to address the copyright issues surrounding graffiti and street art and ensure that the rights of all parties are protected. In conclusion, while graffiti and street art have gained immense popularity and recognition in recent times, they still pose significant copyright challenges. The solutions suggested in this paper can be explored to balance the interests of artists and property owners and ensure their rights are protected. By addressing these copyright issues, we can continue to appreciate and enjoy the unique and vibrant expressions of street art and graffiti while also respecting the legal and ethical considerations that come with it.