

Copyrightability of Street Art and Graffiti Under Copyright Act, 1957

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Abstract

Art is a means of expressing oneself and one's identity and a tool for encouraging creativity. From painting on cave walls to painting on any wall, art has changed dramatically over time, all with the purpose of making cities more aesthetically pleasing and colorful to live in. Graffiti is contemporary art that is created on posts or the walls of buildings. Street art is regarded as a form of art with artistic merit and originality. It takes a lot of effort and skill. The object of choice for the representation of such abilities is typically a structure or boundary wall. Since street art is a tangible medium, it can be assumed that this is the surface. In our universe, property is a dependent fact. It neither follows a natural order nor is required for human survival. Therefore, the emergence of virtual worlds presents us with a wonderful chance to experiment with the legal ties, deals, and commitments that in the actual world are associated with the concept of property. Study also looks upon the author's copyright rights conflict with the owner's property rights. The article's goal is to inspect whether they qualify as imaginative works that are likely to be copyrighted?

Keywords: Intellectual property rights, street art, graffiti, copyrightability, property rights

INTRODUCTION

Street Art

In India, the discussion of visual arts was only concerned with modern, contemporary art that was displayed in official exhibitions [1]. However, there are now more street artists in India than ever before, and they are painting the nation's streets with vibrant brushstrokes. Street artists' rights have been the subject of numerous controversies all over the world as street art has gained more popularity and recognition. Street art is frequently plagiarized and duplicated on apparel, posters, and other products. The central query is whether street artists can assert copyright protection for their own creations and have ownership rights to them.

Street art is seen as a kind of originality and artistic value in art. It takes a lot of effort and skill. Typically, a structure or a boundary wall is used as the support for the portrayal of these capacities. We can infer that since street art is created on a tangible surface, it must be the surface. Street art can therefore be considered a type of creative work that is subject to copyright protection. Indian law protects works of art, and street artists should have a similar voice to safeguard their creations [2].

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The Indian Copyright Act 1957 provides protection for artistic creations. The work must be original and preserved in a tangible and long-lasting medium to be considered an artistic work. The artist who created the piece must have used talent and judgement in order for it to express itself as intended.

The overarching category of moral rights includes protection for an artist's rights. Moral rights are the author's, in this case the artist's, rights. They belong to the author and are separate from copyright. The right to claim authorship, or to receive credit for one's work, belongs to the author. This means that an artist has the right to defend their creations against alterations and harm that can be detrimental to them. Before their work was used for commercial purposes, the artists would also be entitled to compensation for their contributions and permission.

Graffiti

Although the nature of street graffiti can be eccentric and artistic, these works of art are typically attached to other people's property and were usually made without the owner's consent. Additionally, by applying the unauthorized graffiti, the graffiti artist might have broken the law against vandalism, trespassed, and violated the owner's rights [3].

Spray painting artisans who create legal works need more and more protection as the technique becomes more well-known. Customers and the general public are becoming increasingly interested in this handicraft growth and frequently accept these experts' work without their consent. Books, albums, clothes, and other goods with a spray-painting theme occasionally arrive without the first spray painting professionals' consent.

In response, more lawsuits are being filed by artists in an effort to uphold copyright and safeguard their creative works. Examining the copyright concerns associated with unpermitted graffiti, or graffiti that has been applied to a surface without the owner's consent. Despite the fact that there is no established legal standard in India for spray painting professionals to file copyright claims against the owner or other parties that use their unauthorized spray painting, examples from the United States provide some guidance. Additionally, copyright protection is not entirely geographical among Berne Show nations, so it is important to clarify if illegal spray painting is protected in nations like the United States.

RESEARCH PROBLEM

Due to the rising popularity of modern-day arts, street art and graffiti are needed to be protected under the Copyright Act, 1957. Sec. 2(c) of the act defines the "artistic work," which can be copyrighted and protected under the act, the definition under the section lacks the clarity whether street art and graffiti have concrete characteristics of being copyrighted or not, specifically the tangibility of the art. Furthermore, the problem arises out of the conflict between the authors copyright rights and owners' property rights, taking in sense the owner of art and skill and owner of the object on which the art is made.

CLAIM STATEMENT

The research contends that the definition of artistic work under Section 2(c) of the Copyright Act, 1957 should include street art and graffiti under its ambit having the originality expression of the author justified by the personhood theory.

RESEARCH OBJECTIVE

The objective of the study is to seek the justification of street art and graffiti being considered as original expression of art under the definition of artistic work under Section 2(c) of the Copyright Act, 1957 with the analyses of the different literatures and secondary sources along with the application of legal theories and legal precedents by the various jurisdiction of courts.

RESEARCH QUESTION

What are the justifications or requirements under which street art and graffiti can be termed as original artistic work and be copyrightable under Section 2(c) of the Copyright Act, 1957?

RESEARCH METHODOLOGY

The doctrinal method was employed to analyze and evaluate this research with the secondary sources. The majority of the data and material used in the current study were gathered from numerous literary sources such as articles and research notes along with jurisprudential theory and cases of various jurisdictions.

DATA ANALYSIS

Putting the Focus on Innovation

The volume of these sorts of fine art in open settings, which might possibly be unique masterpieces, has duplicated, producing a lot of consideration lately. There is no lawful point of reference as of now that tends to whether various sorts of road craftsmanship and spray painting can be given further security under the demonstration. The subject of whether road workmanship and spray painting might be given similar security as unique works fit for copyright emerges considering the way that artworks and drawings are safeguarded as inventive works [4].

Any work that is a unique result of a creator or proprietor fixed in an unmistakable structure is equipped for being put into the Register of Copyrights, whether or not such work has any imaginative characteristics or not, as per the Training and Methodology Manual for Imaginative Works 2018. In this way, a work should be unique and equipped for being fixed in an unmistakable structure to meet all requirements for copyright security.

Given the attributes of road workmanship and spray painting, obviously these fine arts fulfil both of the guidelines framed in the Training Manual, making them qualified for acknowledgment as masterpieces meriting copyright security [5]. In any case, in light of the fact that the actual regulations don't characterize the expression "drawing," it is important to change the current arrangements of the law, go past them, and appreciate any potential implications the expression could have.

Importance of Articulation of Ideas

The courts have maintained the significance of ideas being expressed through various forms of art. A lonesome In *Maqbool Fida Husain v. Raj Kumar Pandey* [6], the Appointed Authority Seat of the High Court of Delhi ruled in favor of the democratization of handicraft and stated, among other things, that "a liberal rejection of a different opinion produces no hurt." It merely requires more balance, though. Diverse points of view expressed through writing, art, or other visual media promote discussion. Never shut down a discussion. The statement "I am right" does not always imply "You are incorrect." Tolerance is fostered in our culture, both in words and deeds.

The Supreme Court of India's famous landmark decision in *R.G. Anand v. Deluxe Films and Ors* [7], where a Division Bench, held that "It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from other ideas," discussed the liberal articulation of factors and ideas Since ideas, themes, and points cannot be protected by copyright in certain situations, copyright is limited to the structure, manner, course of action, and articulation of the concept by the author of the copyright work. The original expression of ideas or knowledge in a tangible form is what is protected.

Street arts must be rightfully acknowledged as artistic works because they do need imagination, skill, and labor.

A painting, sculpture, drawing, engraving, or picture that is an original "artistic work" is protected by copyright under Section 11 of the Indian Copyright Act 1957, regardless of whether it has artistic qualities. The phrase "exclusive right to manufacture, distribute, and sell copies of works," "right to create derivative works," and "right to publicly exhibit their works" are all examples of copyright in relation to creative creations. These rights are available for as long as the author is alive plus 60 years.

To benefit from legal protection, an author or owner does not have to register the work with the Indian Copyright Office. Registration, on the other hand, offers legal advantages to demonstrate copyright ownership, copyright notice, and other harms for unlawful use [8]. A writer also has moral rights to his or her creations. Through the preservation of the artwork, an artist's moral rights defend their individuality as well as the integrity and spirit of their work. The rights of paternity, integrity, and protection against exploitation belong to the creator of a creative work.

The main right gives the artist the ability to establish paternity, to prevent the use of his name in a piece of work that he did not produce, and to prevent the use of his name in the event that the work is altered in a way that harms his reputation. Any deliberate modification that would harm the craftsman's reputation is prohibited under the right to uprightness [9].

Graffiti is eligible for copyright protection if the legal criteria are only taken into account without taking the illegality of the act of creation into account. Graffiti is considered a unique fixed artistic work of the author that may be protected as "works of painting, graphics, drawing, and sculpting" under Section 2(c) read with Section 13 of the Copyright Act 1957. Courts and academics alike believe authorized graffiti to be copyrightable.

FIXATION OF WORK

The fixation of the work in a medium is another condition, even if it isn't stated explicitly in the Copyright Act of 1957. Or, to put it another way, since ideas and facts are not protected by copyright, only the creative expression of such ideas and facts is sanctioned by the law, and the work has to be fastened to a support.

The fixation stipulation can make it difficult to demonstrate that the graffiti complies with all standards for copyright protection. The graffiti is typically only transitory because it wears off or is covered by the surface's owner or another graffiti artist. To maintain an "artistic discourse," some graffiti artists ask other artists to paint over their creations. However, the reason for a copyright is not precluded by this tainting or discoloration. Graffiti art, like a painting on a wall, is just as permanent as a painting on a canvas or any conventional medium. A piece of graffiti art was adequately connected when it was made; therefore, it satisfies the attachment criteria to be eligible for protection, even if it will be more susceptible to fading and disintegration due to severe weather than a painting fastened to a canvas [10].

CONDITIONS FOR COPYRIGHTABILITY

Graffiti art meets the fundamental criteria to be eligible for copyright protection. If a piece of original writing is eligible for copyright protection, Section 57 of the Copyright Act of 1957 grants the author a broad range of authority that elevates the "work" created rather than making it the target of copyright. The distinctive rights of the author, which go beyond his economic rights, are protected under Section 57 of the Act.

The main right gives the artist the ability to establish paternity, to prevent the use of his name in a piece of work that he did not produce, and to prevent the use of his name in the event that the work is altered in a way that harms his reputation. Any deliberate modification that would harm the craftsman's reputation is prohibited under the right to uprightness. An author has a deep emotional connection to his or her work and connects strongly with it.

This emphasizes that graffiti should be entitled to protection against the interests of the property owner provided it achieves a "recognized stature" and the topic of the art is not unlawful. According to the author, regardless of how innovative a work may be, copyright protection claims are only appropriate for authorized works; nevertheless, no matter how brilliant a work may be, copyright protection claims are never appropriate for works that were generated unlawfully. The interests of property owners should come first.

Personhood Theory

Property rights, like other social institutions, are justified by the advantages they provide to individuals in society. This rationale for all forms of property has mostly been understood in terms of an economic formula that states that property rights are the most effective way to generate societal prosperity. It was noted that property rights provide a way to safeguard people's personality interests or "personhood [11]"; this appeared particularly true with intellectual property rights, which cover works of human imagination. The personhood theory of property emphasizes the connection between personality and possessions. Property is justifiable, so the argument goes, because it helps people develop their personalities and may even be required. Insofar as the approach is, at least in part, outside the mainstream of judicial, if not philosophical, thought, personhood theory has been referred to as an alternative theory of property. As long as a person fits the group's definition of the good, their preservation interest is frequently taken care of in communal societies. However, private property will make it easier for them to veer off the shared course, go their own way, or exhibit their unique personalities. This idea—that preserving private property is crucial for recognizing personhood—was recognized by Kant and subsequently by Hegel.

According to Hegel's Personhood Theory [12], There is a normative relationship between a person's property and personality, and such property is a conceptual extension of a person's personality. Hughes made the infamous claim that intellectual property is a greater "receptacle for individuality." The rights of the author and the rights of the property owners in disposing of the physical thing they have become owners of against their choice are in contradiction because of the paternity and integrity rights ingrained in the aforementioned law. This dispute has a long history in U.S. case law. In *Hanrahan v. Ramirez*, a group of teenage painters created a mural on the exterior of a liquor store that had an anti-drug message with the owner's consent. Three years later, the business owner bleached half of the artwork, prompting the artists to file a lawsuit. The sculpture had earned local approval, had won a national award, and had been displayed as a picture in a government facility, according to the court's 1998 ruling. The painting had to be restored after the judge ordered the painters to pay them £48,000.

DEFENCES

Protection Under the Doctrine of Unclean Hands

In the Villa case, Pearson's legal defense is analogous to the notion of soiled hands. This idea simply states that no one should profit from someone else's wrongdoings and that someone cannot seek for legal protection if they have committed a crime related to the complaint.

It might be claimed that the graffiti artist violated the state's laws against property defacement when he or she created the illegal graffiti, which would make it against the law to do so. Additionally, the graffiti artist could have violated the property owner's rights through trespassing and a tort [13]. Given that they entered the court with dirty hands, it is extremely likely that these violations will prevent the spray-painting craftsmen from presenting a copyright infringement case against the offending party. Imagine that a respondent who appropriated the illegal spray painting declares the spray-painting artist to be the guard of filthy hands due to a copyright infringement allegation. Currently, if the court decides that the skill of spray painting is sufficient to support a copyright claim on its own, the respondent will be considered to be legally responsible for invasion. "Unclean hands" is a legal defense that "is accessible exclusively to a party to a litigation who has acted fairly and honestly and not to a person who is guilty of breaching the law or infringing or usurping someone else's right and such person cannot by putting up such a defense." Notably, the Delhi High Court stated in the matter of *Tekla Corporation & Anr. vs. Survo Ghosh & Anr* [14] that "I have pondered whether such an equitable argument may be claimed to be accessible to an offender of copyright." Can a defendant who is actively violating the plaintiff's rights argue that even if he is doing so, the plaintiff lacks standing to sue because he is also breaking another law or has claimed a right that he is not legally entitled to? No, in my opinion. The notion of unclean hands can also disallow a defense. Therefore, if both the graffiti piece and the defendant are found to have violated copyright, the defense of "unclean hands" would be invalid.

CONCLUSION

The goal of copyright, whether traditional or unconventional, is to make sure that knowledge is spread and learning is encouraged. Graffiti being given copyright protection would expand the list of non-conventional subject matter that can be protected by copyright. In conclusion, the Indian Constitution protects freedom of expression of ideas as one of the Fundamental Rights [15]. Even when they are depicted in different artistic mediums, they are still expressions that should be protected, and if IP rules are in line with the Constitution, this won't be a problem. However, it is unclear if street art and spray painting, which are later fine arts and may only be limited to paintings or drawings, might be seen as creative labor within the context of the demonstration.

The list of things that are protected by copyright is constantly growing, and the purpose of the law is not to prevent the development of new creative forms or to make society less effective. Given the expanding acceptability and legality of this art form, it is unjustified to argue that graffiti is not protected by copyright. Although protecting illegal spray painting can seem unreasonable, if the work satisfies the requirements for copyright protection, it should still be protected even though it is against the law [16]. All things considered, copyright only assigns ownership to a work's elusive components; it is irrelevant to works that have been significantly altered illegally. Graffiti protection may also encourage artists to produce more lawful works. Banksy is renowned for saying "Copyright is for losers." However, Lerman argues that graffiti artists "should still have the opportunity to be losers, even if that is the reality."

REFERENCES

1. Kunwar S. (2021). Whether Street Art & Graffiti can be protected as artistic works under Indian Copyright Law? [Online] ALG India Law Offices LLP. Available at <https://www.algindia.com/article-whether-street-art-graffiti-can-be-protected-as-artistic-works-under-indian-copyright-law/> [Accessed on July 2023]
2. Bertoni A, Montagnani ML. Public art and copyright law: how the public nature of architecture changes copyright protection: future anterior. *J Hist Preserv Hist Theory Crit.* 2015; 12 (1): 47–55. Doi:10.5749/futuante.12.1.0047.
3. Elias BM, Ghajar B. Intellectual property law: graffiti art and intellectual property protection. *GPSolo.* 2016; 33 (2): 64–65.
4. Supra 1n.
5. Nandrekar S. (2020). Illegal street graffiti deserves copyright protection: here's why. Medium. IP Bloke. [Online]. Available at <https://medium.com/ipbloke/illegal-street-graffiti-deserves-copyright-protection-heres-why-e2c3425719a8> [Accessed on July 2023]
6. Global Freedom of Expression. (2021). Maqbool Fida Husain v. Raj Kumar Pandey - Global Freedom of Expression. [Online] Available at: <https://globalfreedomofexpression.columbia.edu/cases/maqbool-fida-husain-v-raj-kumar-pandey/>.
7. Maqbool Fida Husain v. Raj Kumar Pandey. Crl. Revision Petition Nos. 282/07; 114/2007 & 280/2007. Available at <https://globalfreedomofexpression.columbia.edu/cases/maqbool-fida-husain-v-raj-kumar-pandey/> [Accessed on July 2023]
8. R.G Anand vs M/S. Delux Films & Ors. AIR 1613, 1979 SCR (1) 218/1978.
9. Abhijeet K, Mitra P. Graffiti-a non-conventional copyright? [Online]. Available at <https://supremoamicus.org/wp-content/uploads/2019/08/A19.v13.pdf> [Accessed on July 2023]
10. Priya K. Intellectual property and Hegelian justification [Internet]. Available at <http://docs.manupatra.in/newslines/articles/Upload/24FE8F87-714C-4644-BEE3-466B2A9E72C7.pdf> [Accessed on July 2023]
11. Laik K, Raj R. Changing Dynamics of the Patent Regime: An Economic Understanding. *Journal of Intellectual Property Rights* [Internet]. 2007 [cited 2023 Apr 29];12:244–50. Available from: <http://docs.manupatra.in/newslines/articles/Upload/BA592B31-643A-4094-BF07-6453285961EE.pdf>

12. Supra 5n.
13. Laik K, Raj R. Changing dynamics of the patent regime: an economic understanding. Journal of Intellectual Property Rights [Internet]. J Intellect Prop Rights. 2007; 12: 244–250. Available at <http://docs.manupatra.in/newsline/articles/Upload/BA592B31-643A-4094-BF07-6453285961EE.pdf> [Accessed on July 2023]
14. ibid
15. Supra 5n.
16. Case: Tekla Corporation & Anr. Vs Survo Ghosh & Anr. High Court of Delhi (India)CS (OS) 2414-2011. [Online]. vLex. 2014. Available at <https://vlex.in/vid/tekla-corporation-anr-vs-545835202> [Accessed on July 2023]