International Perspectives on Street Art

February 6, 2019
6:00 pm – 8:00 pm
Fordham School of Law
Room 3-04

CLE COURSE MATERIALS
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Speakers

William L. Charron, Partner, Pryor Cashman

William Charron is a litigator who co-chairs Pryor Cashman’s Art Law practice. He represents institutional and individual clients in a wide range of art authenticity, title and other matters. Bill also has extensive experience handling intellectual property litigation involving copyright, trademark, right of publicity, and defamation claims. He is a frequent speaker and writer on issues impacting the art world, such as authenticity disputes, World War II restitution cases, artist royalty rights, and procedural law issues.

Working in conjunction with the Netherlands Arbitration Institute (NAI) and the Authentication in Art (AiA) organization (where Bill serves as an Advisory Board member), he conceived of and formed a working group to design the newly-launched “Court of Arbitration for Art” (where he is now a board member), administered through NAI. Bill is also a founding board member of the Professional Advisors to the International Art Market (PAIAM) in New York.

Diego Figueroa-Rodriguez, Of Counsel, DLA Piper

Diego R. Figueroa-Rodríguez’s main practice focuses on representing issuers and underwriters in public finance transactions encompassing multiple types of financing structures. Principally due to his involvement in the art world as a philanthropist, collector and board member at various cultural institutions, Diego’s practice also includes advising artists, museums, galleries, sovereign countries, private foundations, collectors, auction houses and non-profit art organizations on matters involving a wide range of areas including business, intellectual property, finance, litigation, tax and real estate.

Diego currently serves as a member of the governing boards of the Puerto Rico Museum of Art, the Museum Trustee Association, the Luis Muñoz Marín Foundation and in various advisory committees. Diego is the Vice-Chair of the Art and Cultural Heritage Law Committee of the American Bar Association and is an active member of the Art, Cultural Institutions and Heritage Law Committee of the International Bar Association. He has served as panelist on art law
events around the world; most recently being a guest lecturer at the Faculty of Law and Political Science in the Department of European Law of Pázmány Péter Catholic University in Budapest, Hungary on the subject of Intellectual Property Law in the United States as applied to the Visual Arts, particularly to Street Art. Diego is the author of the United States – Florida Chapter of The Art Collecting Legal Handbook, an international treatise on art collecting published by Thomson Reuters.

Diego obtained a B.A., magna cum laude, from the University of Massachusetts at Amherst, a J.D. from the University of Pennsylvania Law School, a LL.M. on Real Property Development from the University of Miami School of Law, a Certificate on Chinese Law from the School of Law at Renmin University of China in Beijing and has completed courses on international, cultural heritage and art law at the University of Siena Facolta di Giurisprudenza in Italy and the Sotheby's Institute of Art. He is admitted to the practice of law in New York and Florida.

Marie-Cécile Flageul, Co-founder at 5Pointz Creates & Curator at MoSA

Marie-Cécile Flageul was born and raised in Brittany, France. Her first trip to New York City at the age of sixteen sparked her love story with the city that never sleeps. Following her initial stay in the Lower East Side, she returned to North America and extensively traveled throughout, exploring more states than most, and enjoying every experience. Her first love and passion was writing with her goal being to write and move to New York City. After completing her Studies at La Sorbonne, she moved to New York and started her career in the events industry working for a prestigious incentive house and becoming partner in 2003. After 15 years in event planning and over 1000 events completed, she felt it was time to start her own signature firm, which was rebranded this year as makeithappen.live.

Marie has been recognized as the trendsetter in the industry. Often copied, she takes it as a compliment and as an incentive to always look for the next big idea. She has applied all her production and curatorial skills to 5Pointz and now 5Pointz creates. Named and recognized as an activist and true advocate for public art, she was invited to join the board of HDC. In 2015 She was given the "art and activism" award by the Gold Coast Art Center. Her curatorial debut was the highly acclaimed "whitewash Show " in February 2014, and she has not stopped since. Her passion for the culture is infectious and her dedication relentless.
Renée Vara, Founder/Director, VARA ART

Renée Vara is the Founder and CEO of VARA ART with over 25 years of art market and advisory experience specializing in 20th century, contemporary and emerging art and design. She is also an award winning Certified USPAP Appraiser tested in 4 areas of fine art specialization. She currently serves on the Advisory Council and was a two term Board Member for the Appraiser’s Association of America. She regularly lectures and has published based on her expertise for more than 50 organizations and institutions. She has curated more than 40 international emerging art shows at fairs and venues, including Art Basel Miami and Istanbul Biennale. Renée has served as an art legal expert for significant cases, including the landmark VARA litigation, *5Pointz v. G&M Realty L.P.*

She is an award winning faculty at NYU for Art Market Studies, Art Business, Collection Management, and Art History for over a decade, and served as an Appointed Lecturer at the Guggenheim (NY) and Sotheby's Institute. She has been cited in more than 40 major media outlets including The Art Newspaper, Forbes, ARTnews, The New York Times, The Guardian and The Wall Street Journal. Renée’s decade of experience as the National Fine Arts Specialist at Chubb Insurance brings a balanced approach to her clientele of collectors, corporations, institutions, and artists. She holds undergraduate and graduate degrees in art history.
Moderators

Louise Carron, Executive Director, Center for Art Law

Louise Carron is the Executive Director of Center for Art Law, where she conducts research and writing in art law, including fine-tech and restitution issues, along with planning conferences and aggregating information related to art law. Louise is an LL.M graduate from the Benjamin N. Cardozo School of Law (Class of 2018) with a concentration in Intellectual Property, and she holds two French master's degrees in Business Law and Comparative Business Law from the Université Paris Nanterre, where she recently defended her thesis on the comparative legal approach to street art in France and the United States. She passed the New York Bar and intends on helping artists defending their creations, rights, and legacies.

Carol Steinberg, Attorney, Law Office of Carol J. Steinberg

Carol J. Steinberg has practiced art, copyright, and entertainment law in New York City and on the East End of Long Island for over twenty years. She is a Member of the Faculty of the School of Visual Arts, where she teaches courses on artists' rights. Carol is a co-chair of the Fine Arts Committee of the State Bar's Entertainment, Arts, and Sports Law Section and a member of the City Bar's Art Law Committee, where she chairs the sub-committee on Artists' Rights. She is also a member of the East Hampton Arts Council, the Fine Arts Federation, and ALAI (international artists' rights organization founded by Victor Hugo).

About the Sponsors

Center for Art Law

The Center for Art Law is a Brooklyn-based research non-profit dedicated to promoting the law and the visual arts, and to compile information and data related to art law. The Center exists to promote information exchange between artists and attorneys and to organize helpful resources for students and scholars of both disciplines. The Center’s main activities include a blog with articles and resources, a monthly newsletter, and the organization and promotion of multiple art law events during the year, including conferences, movie screenings, and studio tours.

Entertainment Arts & Sports Section of the New York State Bar Association – International Committee and Fine Art Committee

The New York State Bar Association’s Entertainment, Arts and Sports Law Section welcomes Section members and visitors. EASL Section’s more than 1,700 members represent varied interests, including some of the sexiest issues grabbing headlines being debated in Congress and being heard by the courts. The EASL Section provides substantive case law, forums for discussion and debate and information-sharing in the EASL e-community.

The section has a large, active and diverse membership, with lawyers occupying every corner of the entertainment, art and sports law fields, at every level, from law students and first-year attorneys to senior partners at leading national and international firms and senior legal and business affairs executives at multinational media corporations. While the majority of our members are located in New York City and around the state, we also have members in 28 other states and 20 countries, notably in Canada, China, most European countries and the UK, Japan, Korea and throughout the Pacific Rim.

The section is comprised of 28 committees, chaired by the members of the Executive Committee—all leading entertainment, art and sports law practitioners—and each committee hosts frequent, outstanding, and frequently oversubscribed CLE programs.
Fordham Art Law Society

Capitalizing on the privileged location in New York City’s cultural hub, Lincoln Center, the Fordham Art Law Society (FALS) strives to promote an understanding of the intersection between the arts and the law, both at Fordham and in the larger legal community. The Fordham Art Law Society seeks to accomplish this goal by providing a forum for the contemplation and discussion of potential improvements to the art community’s understanding of the law, and the legal community’s understanding of the art industry, serving as an outlet for members to execute these ideas. FALS uses the term “Art Law” in its broadest sense, incorporating legal issues that persist in the creative, visual, and performing arts. This term also encompasses cultural heritage law.
CLE Materials

Key Terms

- **Graffiti**: a term originally given by authorities to encapsulate the vandalous act of writing on a wall (artists call themselves writers). Today, “graffiti” often refers to unauthorized artworks that are word-based. Graffiti works encapsulate *tags*, throw-ups (bubble letter works, consisting of one color for the outline and another for the fill), stencils, sticker art, etc.
- **Murals**: are works typically authorized, if not commissioned, that are painted directly on a wall and span its entirety.
- **Production** or **piece**: is a wall narrative that integrates lettering and a background.
- **Tag**: signature, name of the artist, usually in a single line, but may be complex in calligraphy and appearance.

Laws and Regulations

- Copyright Act, 17 U.S.C §101 Et Seq.
- San Francisco Public Works Code Article 23 “Graffiti Removal And Abatement Ordinance”
- Toronto Municipal Code: Chapter 485, Graffiti
- Singapore Vandalism Act: Chapter 341 (Original Enactment: Act 38 Of 1966)
- French Criminal Code: Article 322-1

**COPYRIGHT ACT, 17 U.S.C §101 et seq.**

102. Subject Matter of Copyright: In General

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

...  
(5) pictorial, graphic, and sculptural works  
...

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.
106. Exclusive Rights in Copyrighted Works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;
(2) to prepare derivative works based upon the copyrighted work;
(3) to distribute copies ... of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; ...

107. Limitations on Exclusive rights: Fair Use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

120. Scope of Exclusive Rights in Architectural Works

(a) The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other
pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

202. Ownership of Copyright as Distinct From Ownership of Material Object

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

302. Duration of Copyright: Works Created on or After January 1, 1978

(a) In General. – Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 70 years after the author's death.

(c) ... Works Made for Hire. – In the case of ... a work made for hire, the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.

VISUAL ARTISTS RIGHTS ACT (“VARA”), 17 U.S.C. 106A

106A. Rights of Certain Authors to Attribution and Integrity

(a) Rights of Attribution and Integrity.—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

(1) shall have the right—
(A) to claim authorship of that work, and
(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right—
(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) Scope and Exercise of Rights.—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a) in that work.

(c) Exceptions.—
(1) The modification of a work of visual art which is the result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).
(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.
(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of “work of visual art” in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) Duration of Rights.—
(1) … the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.
(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.
(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.
(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.

(e) Transfer and Waiver.—
(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the
waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred.

113. Scope of Exclusive Rights in Pictorial, Graphic, and Sculptural Works

... 
(d)(1) In a case in which—
(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and
(B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal, then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author’s rights under paragraphs (2) and (3) of section 106A(a) shall apply unless—
(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner’s intended action affecting the work of visual art, or
(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her
identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.

SAN FRANCISCO PUBLIC WORKS CODE ARTICLE 23 “GRAFFITI REMOVAL AND ABATEMENT ORDINANCE”

SEC. 1301. Purpose and Intent
The Board of Supervisors hereby finds and declares that:
(a) Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City’s property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property.
(b) Graffiti results in visual pollution and is hereby deemed a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

SEC. 1303. Prohibition.
It shall be unlawful for the owner of any real property within the City and County bearing graffiti to allow the graffiti to remain. (Added by Ord. 29-94, App. 1/14/94)

TORONTO MUNICIPAL CODE CHAPTER 485, GRAFFITI

§ 485-1. Definitions
GRAFFITI VANDALISM - Any deliberate markings made or affixed on property that is not currently exempted or regularized by the Graffiti Panel, Executive Director or Council and:
A. was made or affixed without the permission of the owner;
B. is considered by the Executive Director to be a tag;
C. for which there are reasonable grounds to believe that it may incite hatred or violence against any person or identifiable group; or
D. contains profane, vulgar or offensive language.

A. No person shall place or cause or permit graffiti vandalism to be placed on any property.
B. The owner or occupant of property shall maintain the property free of graffiti vandalism.
§ 485-6. Regularization of graffiti art and art murals.
A. Business Improvement Areas, Resident Associations, Ratepayer Associations, other community groups, and individual property owners or occupants may apply to the Executive Director to have specific pieces of graffiti art or specific art murals, not located on a highway or other public space, regularized.
D. Regularized graffiti art or art murals shall be registered in a municipal database.

SINGAPORE VANDALISM ACT: CHAPTER 341 (ORIGINAL ENACTMENT: ACT 38 OF 1966)

In this Act —
“act of vandalism” means —
(a) without the written authority of an authorised officer or representative of the Government or of the government of any Commonwealth or foreign country or of any statutory body or authority or of any armed force lawfully present in Singapore in the case of public property, or without the written consent of the owner or occupier in the case of private property —
(i) writing, drawing, painting, marking or inscribing on any public property or private property any word, slogan, caricature, drawing, mark, symbol or other thing;
(ii) affixing, posting up or displaying on any public property or private property any poster, placard, advertisement, bill, notice, paper or other document.

Penalty for acts of vandalism

3. [A]ny person who commits any act of vandalism ... shall be liable on conviction to a fine not exceeding $2,000 or to imprisonment for a term not exceeding 3 years, and shall also ... be punished with caning with not less than 3 strokes and not more than 8 strokes.

FRENCH CRIMINAL CODE: ARTICLE 322-1

Destroying, defacing or damaging property belonging to other persons is punished by two years' imprisonment and a fine of €30,000, except where only minor damage has ensued.
Drawing, without prior authorisation, inscriptions, signs or images on facades, vehicles, public highways or street furniture is punished by a fine of €3,750 and by community service where only minor damage has ensued.

FRENCH INTELLECTUAL PROPERTY CODE: ARTICLE L. 122-5

Once the work has been published, the author cannot prevent:
11) Reproductions and representations of works of architecture and sculpture, placed permanently in public places (voie publique), and created by natural persons, with the exception of any usage of a commercial character.

**Suggested Articles**

- Center for Art Law, *Part II: UNESCO Forced to Consider Street Art as Cultural Heritage* (2013) [Here](#).
- S. Gray, *Rebels to the Core: 10 Memorable Street Art Arrests*, Widewalls (2015), [Here](#).
- HF, *Das Bombing: Graffiti in Germany and Europe*, The German Way and More (2014). [Here](#). (PDF)
- The Straits Times, *Taiwan’s Graffiti Artists Get a New Urban Canvas as Officials Designate Legal Graffiti Zones* (2015). [Here](#).

**Select Cases**

- United States:

- France:
  ○ Judgment of the Paris lower civil court, 14 November 2007, 14 nov. 2007, RG n° 06/12982 (Invader decision). Decision here (French) (Street artist Invader’s creations are original, i.e. carry the mark of his personality, because (1) he uses subway tiles, and (2) he seals them onto street walls, but he cannot claim a copyright over the idea of invading the planet.)

- Germany:
  ○ Judgment of the First Chamber of the Federal Court of 23 February 1995, I ZR 68/93 (Berlin Wall decision). Decision here (German), summary here (English) (The sale of parts of the Berlin Wall by Defendants infringed on the artists’ intellectual property.)

- United Kingdom:
  ○ The Creative Foundation v. Dreamland Leisure Ltd., 11 Sep 2015 [2015] EWHC 2556 (Ch). Decision here. (PDF) (Banksy’s piece “Art Buff” on the walls of a building belongs to the landlord, not the tenant, who had removed section of wall on which the mural was painted and arranged for it to be shipped to New York to be sold.)