

## Introduction

*Enrico Bonadio*

The idea of putting together contributions focusing on copyright and moral rights aspects of street art and graffiti has been intriguing me for a while. Living for several years in the East London area of Shoreditch, where creativity has exploded and developed after the arrival of the new millennium, has certainly nurtured my curiosity towards these forms of art. Walking through Brick Lane, Red Church Street, Hackney Wick and other London neighbourhoods full of free-hand graffiti pieces, stencilled images, myriads of stickers and paste-ups, street poetry and sculptures, abandoned miniatures and many other artworks opened my eyes and broadened my knowledge of these artistic movements. Visiting, discovering and experiencing graffiti-friendly areas around the world – including Stoke Croft in Bristol, Kreuzberg in Berlin, Williamsburg and Bushwick in Brooklyn (New York), Hosier Lane and Fitzroy in Melbourne, Florentin and Nachalat Binyamin in Tel Aviv, La Candelaria and Puente Aranda in Bogotá – filled me with even more curiosity and willingness to further study and understand these creative subcultures.

While studying and admiring the beautiful art that cityscapes can offer us for free, I could not help thinking about whether and to what extent the branch of law I've been researching (and practising) for many years – i.e. copyright law – may regulate such non-conventional forms of creativity. So I started puzzling about whether the artworks I was admiring could and should be protected by copyright in the very same way works of fine art are, even where the pieces are created illegally (namely, without the consent of the owner of the tangible support upon which the piece is placed, for instance a wall); whether their creators may invoke moral rights protection to successfully oppose destruction or other treatments of their works they may feel unacceptable; and what the impact of such outcomes would be on the rights of property owners and other people. These and others are the legal and policy issues that this volume will address.

This analysis seems timely. There has recently been a sharp increase in cases where corporations from as diverse sectors as fashion, food, entertainment, cars and real estate, have been sued by street and graffiti artists because their artworks had been used and exploited without the artists' authorisation, for example in advertising campaigns, as backdrops in promotional videos, or as decorating elements of products. Cases of misappropriation of art placed in the public environment are alarmingly increasing in many corners of the world, which shows and confirms that these forms of art are vulnerable. They are actually more exposed to unauthorised exploitation and destruction than artworks of fine art are, because they are placed in the public eye and not

in closed galleries or museums. Indeed, as noted by criminologist Alison Young, graffiti and street pieces are ‘written on the skin of the city’.<sup>1</sup>

A recent case that has attracted wide media attention is the dispute concerning the famous New York mural point 5Pointz. In 2018 a judge awarded twenty-one street and graffiti artists US\$6.7m in damages under the Visual Artists Rights Act, as the owner of the site had whitewashed their paintings illegally. This decision is quite revolutionary. Practitioners of a type of art that has long been considered by wide sectors of society as of minor artistic value have been offered a form of legal protection which was originally designed with traditional fine artists in mind. In other words, what this case seems to confirm is that the gap between street and graffiti art and fine art is narrowing, which may contribute towards changing the perception that members of the general public have of these unconventional forms of creativity.<sup>2</sup>

Who would have imagined such a scenario in the 1970s, when a bunch of kids in New York started and developed a subcultural lettering-based artistic movement, which would spread to many cities around the world, and later evolved into, influenced and merged with more figurative forms of art in the street such as muralism? The graffiti pioneers of that era obviously couldn’t care less about asserting copyright on their pieces (predominantly painted illegally on subway trains), or about trying to save them from whitewashing (after all, how could you ask the company managing the subway system to preserve a piece you’ve painted on the external panel of a train?). Their focus was instead on improving their lettering style, competing with their peers and eventually advancing the artistic subculture, often with anti-establishment messages and overtones.

Still nowadays, street artists often convey anti-establishment and anti-consumerist messages, and several show a certain rejection of the professional art market. Yet, this doesn’t mean that all artists within these communities totally ignore the ‘white cube’ world. Quite the contrary: many street and graffiti artists both place their art in the street and paint canvases or create prints that end up being exhibited, offered for sale and sold in galleries. This does not come as a big surprise. Even some early New York writers of the 1970s and early 1980s had the chance to paint and show canvases in exhibitions (such as the ones organised by Hugo Martinez, an influential figure who encouraged young writers to work in studio as well) and galleries (including the legendary Fashion Moda launched by Stefan Eins in the South Bronx, and the Fun Gallery started by Bill Stelling and Patti Astor in lower Manhattan).

Also, in present times street and graffiti artists increasingly operate within the boundaries of the law. Ethnographic research conducted by Ronald Kramer has demonstrated that since the 1990s a constantly increasing number of graffiti practitioners have not only created art legally but have also looked for integration within the society at large.<sup>3</sup> This is not to say that illegal graffiti is not practised any more. Of course, it is, and it is often of high artistic value, as a rapid look at our cities can confirm. Yet, street and graffiti artists’ willingness to find ‘legal’ walls and other surfaces to paint is definitely more pronounced now than in the past.

Moreover, many artists within these communities frequently do chase and exploit commercial opportunities, which may range from taking commissions to painting murals for businesses, to even granting advertisers and corporations copyright licences to exploit their art to sell products or services. Using business cards, leaving Instagram or email addresses close to murals

<sup>1</sup> Alison Young, *Judging the Image: Art, Value, Law* (Routledge 2005).

<sup>2</sup> The 5Pointz case may also represent an evolution of these artistic communities – with several street artists being no longer unconcerned about the destruction of their art, but instead more and more interested in trying to preserve it.

<sup>3</sup> R. Kramer, ‘Painting with Permission: Legal Graffiti in New York City’ (2010) 11(2) *Ethnography* 235–53.

and creating and managing dedicated personal websites where pieces are shown are all tools used by a high number of practitioners of these forms of art to promote themselves and also try to sell their art. This is done for a variety of reasons, not least to simply pay the bills, put food on the table and support families.

Sociological research has demonstrated that practising graffiti is often seen by writers as a possible career path. Gregory Snyder's seminal ethnographic study indeed shows how writers can turn their artistic passion into adult and socially acceptable careers – from professional muralists and fine artists to graphic designers and tattoo artists, as well as advertising experts and fashion designers.<sup>4</sup>

### 0.1 WHAT ABOUT COPYRIGHT THEN?

Copyright can certainly benefit street and graffiti artists in a variety of ways. First, it could help them in extracting economic value out of their creations, for example by enabling them to authorise third parties' exploitation of their art in return for an economic consideration. Several artists within these communities actually do this. Let's just imagine for a few seconds how even richer the well-known British artist Banksy could be if he had not waived his copyright<sup>5</sup> and had instead regularly required all people that make money out of his art to pay royalties or damages.

The main objection to the above argument is that once the copyright narrative fully enters and penetrates the graffiti and street art communities, it will 'corrupt' and negatively change the very anti-establishment nature of these subcultures.<sup>6</sup> In this volume, for example, Andrea Baldini is concerned about copyright's capability to undermine the 'subversiveness' of these artistic movements.<sup>7</sup>

While it cannot be denied that claiming and enforcing copyright accentuate street and graffiti artists' focus on economic gains, the idea of selling out is certainly not the only driver that may prompt artists to rely on this intellectual property right. First and foremost, artists may want to license rights over their art to just support themselves, or even their artistic projects, which can help in building name recognition and securing wider exposure. Second, copyright may be exactly the legal tool to maintain the artists' anti-establishment message, especially where corporations misappropriate the art for their own commercial advantage. Asking judges for and obtaining injunctions prohibiting companies from economically exploiting their art help street and graffiti artists to avoid being associated with profit-related messages they may dislike. Attempts of this kind have actually already manifested. In 2016 the fiancée of the deceased former New York graffiti writer Dash Snow sued on these grounds the fast-food giant McDonald's as the latter had incorporated and reproduced the writer's stylish signature SACE into several of its restaurants' walls.<sup>8</sup> Similar complaints were also recently filed by graffiti artists Revok,<sup>9</sup> Reyes Steel and (again) Revok<sup>10</sup> as well as Rime<sup>11</sup> and Keptione and DJ Rakus<sup>12</sup> against fashion

<sup>4</sup> G. Snyder, *Graffiti Lives – Beyond the Tag in New York's Urban Underground* (New York University Press 2009).

<sup>5</sup> In his famous book *Wall and Piece* (Random House 2005) Banksy declares that 'copyright is for losers'.

<sup>6</sup> Nicole Grant, 'Outlawed Art: Finding a Home for Graffiti in Copyright Law' (2 March 2012), p. 32, available at SSRN: <http://ssrn.com/abstract=2030514> accessed 12 December 2018.

<sup>7</sup> See Chapter 20 by Andrea Baldini in this volume.

<sup>8</sup> *Jade Berreau v McDonald's Corporation et al.*, 2:16-cv-07394 (Central District of California).

<sup>9</sup> *H&M Hennes and Mauritz GBC, and H&M Hennes and Mauritz L.P. v Jason Williams a/k/a Revok*, Case 1:18-cv-01490.

<sup>10</sup> *Jason Williams et al. v Roberto Cavalli, S.p.A. et al.*, Docket No. 2:14-cv-06659 (C.D. Cal. Aug 25, 2014) (this case was started by Reyes, Steel and Revok).

<sup>11</sup> *Joseph Tierney v Moschino S.p.A. et al.*, Docket No. 2:15-cv-05900 (C.D. Cal. Aug 05, 2015).

<sup>12</sup> *Donald Robbins and Noar Daar v Oakley Inc.*, Case 2:18-cv-05116-PA-KS.

companies that had used the art to decorate or otherwise promote their products without the artists' authorisation. And they have all done so precisely because they didn't want to be perceived as endorsing or sharing consumerist and profit-oriented messages.<sup>13</sup> Isn't that an attempt to maintain the very subversiveness and anti-establishment feature of these forms of art? In other words, these legal moves may allow artists to maintain the control of their art and 'keep it real' (and such actions could be encouraged and popularised further by facilitating the use of 'no win, no fee' agreements between artists and their lawyers). Obviously, there are issues related to the opportunity of bringing a legal case where the street or graffiti artwork is created illegally. Indeed, the artist here will likely abstain from claiming copyright for fear of revealing her identity and thus being prosecuted. Yet, the risk of criminal prosecution would be lower, if not totally absent, where a copyright claim is brought at some point after the artwork has been illegally created, namely after the statute of limitation has expired (the period of time varies depending on the country). At that point artists or their heirs may start nurturing an interest in bringing a legal action.<sup>14</sup>

So, as we have seen, copyright can be an instrument to maintain the very nature of these forms of art. It can also enable street and graffiti artists to grant licences authorising certain 'social' uses of their creations, for example to promote causes of interest to local communities. Take London artist Stik, who is known for painting his iconic Stik figure (a six-line, two-dot figure) and for partnering with public service organisations and charities such as the British National Health Service and the *Big Issue* (a street newspaper that supports homeless people). This artist basically authorises such entities to use the Stik figure – no doubt, a copyrightable and copyrighted work – on leaflets, posters, banners and similar, just for the purpose of promoting their socially sensitive activities.

In light of the foregoing, we could thus note that copyright is a neutral, malleable and flexible legal tool which can be relied on by street and graffiti artists for a variety of reasons and purposes, not only for making profits, but also simply to make a living, finance further their art projects and support socially important initiatives.

Another objection to the copyright argument is based on the so-called IP negative space theory, which argues that creators in certain sectors (e.g. fashion, stand-up comedy, magic tricks, tattooing and cuisine, amongst others) produce original outputs without the lure of monopolistic rights.<sup>15</sup> In other words, making copyright available in these cases is not the main motivational trigger that pushes people to generate works. This theory would apply to graffiti and street art as well.<sup>16</sup>

<sup>13</sup> The desire not to be associated with such messages is felt by many visual artists. See a recent Danish case involving (not a graffiti piece, but) a public artwork, where the artist Ai Weiwei has successfully enforced his copyright against an importer of Volkswagen cars. The piece was placed on the windows of an institution for contemporary art and comprised 3,500 orange life jackets once worn by refugees. In July 2019 the Court of Copenhagen held that the use of such artwork in the background of a car advertisement was "in clear contradiction with the considerations and thoughts that were behind the work and the detailed content of the work. The exploitation caused a certain risk of diluting Ai Weiwei's artwork and had the character of a parasite on Ai Weiwei's good name and reputation". On this case see <http://www.artnews.com/2019/07/17/ai-weiwei-volkswagen-lawsuit/> (last accessed on 12 August 2019).

<sup>14</sup> For example, in the *Jade Berreau v McDonald's Corporation* case (n 8), as mentioned the copyright-related legal action was taken by the partner of the deceased artist Dash Snow – who in the 1990s had been illegally tagging his signature extensively in New York.

<sup>15</sup> See for example Karl Raustiala and Christopher Springman, *The Knockoff Economy* (Oxford University Press 2012); Elizabeth Rosenblatt, 'A Theory of IP's Negative Space' (2011) 34 *Colum. J.L. & Arts* 317; Rochelle Cooper Dreyfuss, 'Does IP Need IP? Accommodating Intellectual Production Outside the Intellectual Property Paradigm' (2010) 31 *Cardozo Law Review* 1437; Kate Darling and Aaron Perzanowski, *Creativity Without Law: Challenging the Assumptions of Intellectual Property* (New York University Press 2017). All these studies highlight scenarios where creativity and innovation flourish and prosper without legal incentives.

<sup>16</sup> See Cathay Y. N. Smith, 'Street Art: An Analysis Under U.S. Intellectual Property Law and Intellectual Property's "Negative Space" Theory' (2013) 24 *DePaul J. Art & Intell. Prop* 259–93.

That most street and graffiti artists are not pushed to create art by the possibility of claiming copyright is undeniable. A quick conversation with some of them, both street artists and writers, will confirm this point. They are instead mainly driven by passion, the desire to compete in their artistic communities and in general to leave a mark in the city. Copyright is not therefore the trigger for their creativity spark. But my point is that this is also true of other (more traditional) fields of creativity. For example, many fine artists and musicians, especially in the early years of their career, are not really bothered about copyright when producing paintings or composing songs – they're driven more by desire than calculation.<sup>17</sup> What about poets or young novelists? Do they start writing poems or books because they are intrigued by the chance of extracting royalties? Not at all. And academics? Do we spend years of our life researching and writing books and papers because we are excited by the idea of enforcing copyright? Not at all. The list could go on and on. In her book *The Eureka Myth* Jessica Silbey brilliantly provides other similar examples, questioning the conventional wisdom that copyright, and intellectual property in general, stimulates the creation of works and other human endeavours.<sup>18</sup> This is, of course, not to say that copyright is never of interest to the above creators. Actually, an interest in asserting this intellectual property right will likely arise after the work is created, and even more strongly when someone exploits such work without the author's or artist's consent. This is also the case of street and graffiti art scenarios. We have seen above the legal complaints brought by Revok, Reyes, Steel, Rime, Keptione and DJ Rakus in the United States (several other chapters in this book will mention other lawsuits as well). These artists probably started placing artworks in the street just because they love these forms of art, or because it is just what they are good at doing, or because they are simply doing their job. Yet, when a fashion company started using their art without permission, they sued and complained on copyright infringement grounds.

It is therefore clear that utilitarian theories (i.e. that focus on the assumption that exclusive proprietary rights should be granted to encourage further creativity) cannot be used to justify copyright in street and graffiti art. What appear more suitable are natural rights or labour-based theories: i.e. everyone should have a property or natural right in the labour of their own body.<sup>19</sup> Indeed, a work that springs from the intellect of the individual should be considered as the expression or projection of the individual's personality – which is also what happens in street and graffiti art circles.<sup>20</sup> There is here a strong bond between the artist and her work: the former strongly identifies herself in the latter. The tag, the character, the symbol or the whole piece of art created and placed in the street represents a projection of the artist herself.

## 0.2 SOCIAL NORMS AND THEIR INTERACTION WITH COPYRIGHT

Street art and to a larger extent graffiti communities have quite a developed system of social norms, which regulate the creative processes from within: 'be original', 'don't bite' (biting means 'copying' in graffiti jargon) and 'don't go over' (which requires writers not to destroy or damage the work of other writers) are the most important.<sup>21</sup>

<sup>17</sup> R. Tushnet, 'Economies of Desire: Fair Use and Marketplace Assumptions' (2009) 51 Wm & Mary L. Rev. 513, 516.

<sup>18</sup> Jessica Silbey, *The Eureka Myth – Creators, Innovators, and Everyday Intellectual Property* (Stanford University Press 2014).

<sup>19</sup> Grant (n 6) 13.

<sup>20</sup> Owen J. Morgan, Graffiti – Who Owns the Rights? (Working Paper 2006) 5, 19, <http://ssrn.com/abstract=929892> accessed 1 January 2019; Celia Lerman, 'Protecting Artistic Vandalism: Graffiti and Copyright Law' (2013) 2 NYU J. Intell. Prop. & Ent. L. 295, 322.

<sup>21</sup> Such norms have been highlighted and commented on by Marta Iljadica, *Copyright Beyond Law: Regulating Creativity in the Graffiti Subculture* (Bloomsbury 2016).

Biting is perceived negatively in the graffiti subculture as it lowers the esteem writers have within the scene. The ways bitten artists react can be various, including painting over and vandalising the ‘infringing’ piece; publicising the imitation through social media with a view to causing an aura of disapproval amongst the public and triggering shame in the biter (in the old days resorting to violence or the threat to use it against biters was also an option).

While biting is not accepted, practitioners of these forms of art often tolerate other artists getting inspiration from their works, especially if the taker is younger and pays homage and respect to the older artist (although the line distinguishing biting and inspiration is often blurred). Sharing and appropriation are indeed structural elements of street art and graffiti. What writers and street artists also accept, and often even appreciate, is the sharing of pictures and videos incorporating their art on social media, especially if their authorship is acknowledged. Spreading images of their pieces not only increases their visibility and recognition inside and outside their circles, but also helps to document these artistic movements and develop them further.

Norms of ‘street justice’ do certainly play a role in regulating behaviours within street and graffiti art scenarios. Yet, they may not be enough, as is confirmed by the fact that – as mentioned – artists have also had to bring legal actions against infringers. It’s not just economic exploitation of the art by corporations or other people that cannot be opposed by relying on social norms. Use of street artworks that prejudice the reputation or honour of the artists may not be easily prevented either (think again of a corporation incorporating graffiti in a commercial aimed at promoting products or services loathed by the artist). Also, how could artists who authorise organisations (e.g. charities) to use images of their murals make sure that they are not treated in a way the artists do not like? Community’s norms may not be of great help here – copyright-focused contracts may instead be needed that clarify uses that are permitted and those that are prohibited.

Having said that, one may argue that copyright regimes cannot be reconciled with the sharing and appropriation features of street and graffiti art culture. Indeed, an objection could be made that strong copyright enforcement systems – which often treat mere adaptations of works as infringement – would not be compatible with such structural elements of graffiti and street art. The fact that artists here do not resort to copyright to oppose adaptations of their works by peers (they either accept it as homage or rely on social norms as a form of reaction), would make this subcultural creativity incompatible with copyright rules and principles. Yet, it could be counter-argued that other artistic movements are and have been based on the practice of borrowing images and details from other artists (as well as from popular culture). Pop art for example has challenged the traditional concept of fine art by incorporating elements from the news, celebrities and advertising world, where material is often taken from its initial context and transposed into a completely opposite artistic location. And what about the ‘appropriation art’ movement, which is based precisely on the use and arrangement of pre-existing objects or images?

The above counter-arguments certainly seem convincing. Yet, they may not be strong enough to fully address the ‘borrowing’ objection, especially if we take into account how strongly and widely copyright is protected nowadays in many jurisdictions, sometimes with little room left for creative re-users. What could therefore be imagined is a ‘thin’ and more relaxed copyright system that is capable of accommodating the needs of artistic movements that – like street and graffiti art – are very much based on a sharing ethos. A regime of this kind could for example include: a robust non-commercial fair use/fair dealing exception, guaranteeing fellow artists the freedom to take inspiration from and adapt previous artworks; and a wide and strong freedom of panorama exception, allowing non-commercial uses of street and graffiti artworks by both fellow artists and



members of the general public, especially on social media and other data sharing platforms.<sup>22</sup> Fine-tuning copyright systems along these lines would address those sceptical opinions that highlight how the ‘entry’ of copyright into street and graffiti art scenarios might discourage artists from creating further and eventually jeopardise the development of these subcultures.

A relaxed copyright system could thus complement the already existing (and somehow functioning) social norms of these artistic communities. Indeed, legal and community norms are here complementary, and can even be mutually supportive. When the graffiti artist Revok complained about the fashion retailer H&M using his mural for promotional purposes,<sup>23</sup> there was a robust reaction by the street art community praising the legal action, with calls on social media platforms to boycott H&M products and actual paint attacks on the retailer’s stores in several countries. Such a backlash may have had the indirect effect of strengthening Revok’s legal complaint. Obviously, when a street or graffiti artist bites another, for example by painting an identical mural in another location, the bitten artist who wishes to react does not take legal action invoking copyright or moral rights – what he or she does is just to rely on street justice.<sup>24</sup>

### 0.3 THE STRUCTURE OF THE BOOK

The book is divided into two ‘macro’ parts, which are in turn divided into sections. The first part introduces readers to the world of street art and graffiti, by first providing a historical and socio-logical analysis of these forms of art (Section A) and a preliminary policy and legal assessment of the main copyright and moral rights issues (Section B). The second part goes then into more depth and offers a thorough legal and policy investigation of the latter aspects in selected jurisdictions.

The first section of Part I is opened by Heitor Alvelos who tables a set of premises for the scrutiny and interpretation of graffiti and street art. The ensuing chapters are authored by Ronald Kramer (focusing on the process of corporatisation and commercialisation these artistic movements nowadays undergo) and Peter Bengtsen (expanding on cases of removal and relocation of street artworks, and non-legal reactions to such phenomenon). Paula Westenberger then opens the second section, analysing, from a human rights perspective, the arguments for and against copyright protection for illegally created street art. Street and graffiti artists’ moral right of integrity are dealt with in the other two chapters of this section. On the one hand, Enrico Bonadio investigates whether this right can be helpful to preserve street artworks and looks at the balance with conflicting interests of property owners and the public at large; and on the other hand, Marta Iljadica (Chapter 6) considers graffiti writing and street art through the lens of property law by focusing on the material support that incorporates the artworks.

Part II of the volume structures the legal and policy analysis based on a country-by-country approach. The first section includes chapters on the United States (Enrico Bonadio), Canada

<sup>22</sup> For similar proposals see Marta Iljadica, ‘Copyright and the Right to the City’ (2017) 68(1) *Northern Ireland Legal Quarterly* 59–78. Some contributors in this volume also highlight similar exceptions. See for example Chapter 8 by Pascale Chapdelaine and Chapter 16 by Tobias Schonwetter and Bram Van Wiele in this volume.

<sup>23</sup> H&M (n 9).

<sup>24</sup> Also, when Banksy famously went over and partially destroyed a graffiti piece painted by the legendary writer Robbo in the 1980s on a wall of the Regent’s canal in London, the latter evidently was not interested in legal action against the former for a violation of the moral right of integrity (see also D. Schwender, ‘Does Copyright Law Protect Graffiti and Street Art?’ in J. I. Ross (ed.), *Routledge Handbook of Graffiti and Street Art* (Routledge 2016) 460). What ensued was a feud consisting of reciprocal painting over their murals, which can also be labelled as an example of conversation (or clash) between artists in the street. On this story see British TV Channel 4 documentary *Graffiti Wars* (2011).

(Pascal Chapdelaine) and Colombia (Marcela Palacio Puerta); the second section on the United Kingdom (Enrico Bonadio), France (Shane Burke), Germany (Marc Mimler), Italy (Enrico Bonadio and Gilberto Cavagna di Gualdana), Netherlands (Anke Moerland and Stéphanie de Potter) and Greece (Stavroula Karapapa); and the third section on South Africa (Tobias Schonwetter and Bram Van Wiele), India (Nandita Saikia), Australia (Mark Davison) and New Zealand (Jonathan Barrett). The common thread which links these countries is that they all have vibrant and dynamic street and graffiti art scenes, which have developed over time with different degrees of intensity and depth.

The ‘national’ chapters cover a common set of issues. A first issue is whether these types of artwork meet the fixation requirement (where relevant) and the originality test, this latter point being potentially problematic for graffiti lettering art, especially tags and throw-ups (which are usually painted or drawn illegally) as well as street messages. Tags are street signatures placed by graffiti writers on walls and other urban surfaces, often in condensed and (at least to the eyes of graffiti insiders) visually aesthetic calligraphic form. Painted repeatedly in our cities, they represent the writers’ chosen name and epitomise a strong desire to be recognised and appreciated within the subculture. In graffiti jargon a throw-up – which also represents the writer’s name – is a one-colour outline and one layer of fill-colour, frequently painted in bubble style letters: it is basically an evolution of the tag.<sup>25</sup>

The integrity right and illegality issues, broadly highlighted in Part I, are also covered in this second part of the book and here analysed from a national perspective. The integrity right debate delves into the relationship (and clash) between artists’ moral rights and the tangible property rights of the owners of the support upon which the art is placed. It focuses on whether artists are capable of enforcing this right to prevent the property owner or others from destroying their works as well as removing and relocating them into indoor venues such as galleries, museums or auctions, often for the purpose of being sold or anyhow monetised. Indeed, there has been a recent increase in cases of ‘surgical’ removal and relocation of murals and other artworks originally placed in the street. Whether street artworks created without the authorisation of the property owner are protectable by copyright is another controversial legal and policy issue covered in the ‘national’ chapters.

As often there are no specific statutory provisions or developed case law in the national jurisdictions covering the above issues, contributors provide an interpretation of the law conceived for works of fine art (such as canvases, sculptures and works of architecture) and expand on how it could apply to graffiti and street art scenarios. Case law specifically covering these issues may soon intensify, however, as these art forms rapidly become more socially accepted and increasingly exposed to corporate appropriation and the risk of destruction or other prejudicial treatments.

Finally, the book is brought to an end by a concluding chapter, written by Andrea Baldini, who presents – from a sociological and philosophical perspective – a contrasting opinion. As mentioned, Baldini believes that copyright could not be reconciled with the subversiveness of these forms of art and therefore would not be apt to regulate creativity in these artistic communities. He instead proposes that cultural rights provide a legal framework for the protection of street and graffiti art that is more appropriate than copyright. This sceptical position will certainly enrich the debate this book aims to spur.

<sup>25</sup> All contributors also address, to different degrees, issues related to the enforcement of the paternity right by street and graffiti artists, especially where the artworks are produced anonymously and illegally.



## O.4 TERMINOLOGY

Some chapters at times use, and refer to, the words ‘street art’ and ‘graffiti’ interchangeably, for convenience sake. Yet, there are differences between the two artistic movements. The term ‘graffiti’ is used to refer to the technique of painting stylishly names and letters on various urban surfaces, such as tube and railway trains as well as walls. Graffiti artists are known as ‘writers’ because this is what they do, they ‘write’ their names, often reinterpreting, deconstructing and making unreadable the letters of the alphabet. The expression ‘street art’ on the other hand refers to more elaborate forms of art focusing on images, rather than letters, and includes murals, stencils, paste-ups, stickers and several other techniques. Despite the fact that these categories of art are discrete, the line distinguishing them is often blurred, with many street artists engaging in graffiti writing and various graffiti writers incorporating figurative elements into their works. It is therefore understandable why the two terms are frequently used interchangeably, not only in this volume but also by the media and in popular culture. Moreover, on a few occasions the expression ‘graffiti’ is used in the book to refer to works created illegally (especially, tags and throw-ups), while the expression ‘street art’ is used to describe authorised or commissioned murals. Again, this pattern probably follows widely accepted media and popular culture perception of these forms of art. Yet, the walls of our cities may often display authorised or commissioned graffiti writing and illegally created street art.

Members of the general public and media outlets often consider graffiti lettering (and to a certain extent stickering and paste-up art) as a less valuable and pleasant form of art, if not deplorable ‘visual pollution’, while the more socially acceptable street art is championed and glorified. Yet, such a reading and interpretation is superficial, flawed and probably fuelled by widespread ignorance of these creative subcultures. I truly hope that this book may help to change such a wrong perception.

PART I

Creativity in the Street Between Misappropriation and Destruction  
*The Role of Copyright and Moral Rights*