Public Art and Copyright Law

An Exploratory Analysis

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Overview

• Terms in place

• Architectural copyright

• Copyright protection for works of public art

• Mapping the conflicting interests in Public Art

• Making sense of the “public interest” in PA cases
Public art?
Terms in place

street graffiti
Landscape
Bridges damps
furniture Paintings
Monuments lighting
civic gardens
Buildings Structures
Terms in place

public architectural works (e.g. buildings)

public works of fine arts (e.g. graffiti, monuments)

http://www.discoverglasgow.org/street-art-taxi-balloons/4584295697
Terms in place

Common features

• Publicly displayed

• Single/stand alone original works

YET
Terms in place

[Image of a bridge over a river with text: "Terms in place"]
Diverse © regimes

Public works of fine art
“traditional” copyright

Architectural works
architectural copyright
Architectural copyright: decades of debate

1908 Berlin Revision Conference of the Berne Convention → works of architecture

- Article L. 112-2, 7° of the French Intellectual Property Code → works of architecture and urban design
- 1911 of United Kingdom → design contained in architectural drawings but not architectural ideas and concepts

Directive 2001/29/EC (art 5(3), lett h)) → freedom of panorama
- ‘use of works, such as works of architecture or sculpture, made to be located permanently in public spaces’

1990 US Architectural Works Copyright Protection Act (AWCPA):
- Only human occupancy (no bridges, dams, tents, recreational vehicles, mobile homes and boats)
- No moral rights

2000 Australian Copyright Amendment (Moral Rights) Act → moral rights to architects
- Paternity right
- Integrity right
More on copyright on architectural works

Traditionally \( \rightarrow \) immaterial representation (\textit{corpus misticum})
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material embodiment(s) (\textit{corpus mechanicum})

Architectural works \( \rightarrow \) 1 \textit{corpus misticum}

2 \textit{corpora mechanicca}

two material embodiments of the same immaterial representation

Plans and drawings

Completed work
Visionary architecture

Gran Fábrica
(tinta roja sobre cartulina, 28,5 x 32, 5 cm.)
Publicado en Architettura futurista (fig. n. 21), Foligno, 1924.
Completed works and ECONOMIC RIGHTS

- Two-dimensional reproduction
  - Buren et Drevet v Lyon (2005) FR
  - Radford v Hallensteins Bros Ltd (2007) NZ
  - Tats Cru v Fiat (2011)
  - Cali Killa v Urban Outfitters (2011)
  - Rime v Moschino (2015)

- Three-dimensional reproduction
  - Miniatures
  - Same size
    - Wangjing Soho project vs Meiquan 22nd Century
    - Austrian town of Hallstatt
Buren et Drevet v Lyon

Place de Terreaux in Lyon
Radford v Hallensteins Bros Ltd

Radford’s Tip in Auckland
Tats Cru v Fiat
Cali Killa v Urban Outfitters
Rime v Moschino
Wangjing Soho and Meiquan 22nd Century
Austrian town of Hallstatt
Chinese town of Hallstatt
Copyright protection for public art works

The ‘MORAL SIDE’ of public art …

• Calatrava’s Zubi Zuri in [Bilbao (2007)] SP
• Stuttgarter Hauptbahnhof (2010) GE

… And beyond

• Bansky phenomenon
  – Bansky’s Slave Labour (2013)
• Blu phenomenon
  – Blu v Bologna (2016)
Zubi Zuri Bridge in Bilbao
“In addition to constituting a singular artistic creation suitable for protection, the work is a public one, offering a service to the citizens, and thus satisfies a public interest. If we weigh these interests, the public must prevail over the private”
Stuttgarter Hauptbahnhof
(Bansky’s) Art Buff (Folkestone)
Bansky’s Slave Labour (London)
Blu v Bologna
Mapping the conflicting interests in Public Art

- Private interests of the Author/Architect/Artist
  - Copyright/individual identity

- Private interest of the Owner
  - Property

- Pluralistic interests
  - Local/state authorities
    - Cultural heritage law/urban law
  - Third parties
    - Freedom of panorama
  - Communities inhabiting that public space
    - Collective identity
Making sense of the public interest in PA

- Works created to be publicly displayed

- Trilateral relationship: author/owner/public

- Copyright traditional balance between private and public interests is altered

- Identitarian processes are triggered

- Collective interests play a role
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Bicycle rank in Brookline, MA
What is freedom of panorama?

- Copyright exception:
  - 17 U.S. Code § 120(a)
  - Member states (62 of the United Kingdom Copyright, Designs and Patents Act 1988; article 59 of the *Urheberrechtsgesetz*).

- Different interpretation:
  - Commercial vs non commercial
  - Public art boundaries
  - Where the photo is taken from

- Risk of overlap with cultural heritage laws
Made by King of Hearts based on Quibik's work
Freedom of panorama

i.e.: Freedom to reproduce and use works of art that are made to be located permanently in public places.

- Common law countries → a more open approach
  - 17 U.S. Code §120 - Scope of exclusive rights in architectural works: "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.

- New Zealand: an "open" approach for all public art works (except paintings), provided that the reproduction of works in the public space is incidental to creating a new work, regardless of whether this is made for profit or not.

- Directive 2001/29/EC (art 5(3), lett h) → freedom of panorama
  - 'use of works, such as works of architecture or sculpture, made to be located permanently in public spaces'

- From optional to mandatory?
  - Or better: making mandatory the request of authorization

Made by King of Hearts based on Quibik's work.

Legal Street Art & Copyright Protection

• Paintings on walls that are legally realized are no different from other artistic works
• They are protected if they meet copyright requirements
• Therefore, copyright protection will include:
  – Protection from copying OK
  – Protection from sale and removal OK
  – Protection from destruction ... depending on the public interest at stake
• Publicly displayed artworks alter the traditional balance between private and public interests

• Trilateral relationship: author/owner/public

• Public art works trigger identitarian processes and resurrect pluralist interests
Illegal street art is protected under copyright as the process by which an artwork is created is neutral in copyright terms (see, for example, paparazzi pictures).

Copyright protection includes:
- Protection from copying OK
- Protection from sale and removal NOT SURE
- Protection from destruction MORE LIKELY NOT