

## **DECODING THE INTERSECTION OF STREET ART AND COPYRIGHT**

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### **ABSTRACT**

*The concept of copyright can be traced back to the 17<sup>th</sup> century. What began as Statute of Anne, has come a long way. It has been reshaped, remade, and reproduced into various versions suitable for that epoch. A law, even as old as this one, has gone through numerous changes and accommodated upcoming concepts that would fall under the domain of copyright. Initially only literary works were protected under the statutes but through international conventions other works also received protection. As the digital age advanced, under the umbrella of Original Literary, Dramatic, Artistic and Musical works, emerging concepts seem to be carving their own niche for protection. When it comes to art, it has been used to express what could not be expressed by words. May it be silly drawings made by children or paintings made on walls for decorating the walls, it is filled with expressions. Lately, such art has been found adorning the walls of the street. Whether it a simple word painted or an elaborate scenery, it carries an expression of an idea and the same is liable to be protected under copyright laws.*

*This paper seeks to assess the copyrightability of such an ephemeral form of art and related implications. At the outset, this paper discusses street art as copyrightable subject matter as well as how it deals with originality, fixation, sweat of the brow and modicum of creativity. Later the paper discusses the rights of artists engaged in street art through IP perspective. Towards the end, the paper focuses on the challenges faced while protecting street art with the 'encircled C', how violations and infringements take place and how the copyright can be enforced. Finally, the paper concludes by offering creative solutions to the legal and practical challenges surrounding copyright protection for street art.*

**Keywords:** Street Art, Graffiti, Copyright, Artistic Work, Infringement

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## **INTRODUCTION**

Graffiti is defined as “usually unauthorized writing or drawing on a public surface”.<sup>1</sup> Murals is defined as, “applied to and made integral with a wall or ceiling surface”. Murals are widely associated with artwork on walls of historical monuments such as the caves of Ajanta Ellora, ceiling of the Sistine Chapel by Michaelangelo, etc. and are usually sanctioned and paid to be made whereas, graffiti can be found on walls of the city or buildings wherein an artist splashes his heart out on the walls.

Celia Lerman lists down two definitions of graffiti. While discussing the broad meaning, she refers to “an artistic movement that includes several different styles (spray paint graffiti, street art and stencils), which, in turn, are associated with different socio-cultural groups.” Only spray-paint graffiti has been considered in her narrow definition.<sup>2</sup> Therefore, going by the author’s definition, street art forms a part of graffiti.

Such pieces of art are depictions of cultural and traditional sentiments. The streets of America in 1920s and 30s were adorned with graffiti albeit, then these were the works of gang members rather than having any artistic merit to it. Train carriages were sprayed with graffiti as well.<sup>3</sup>

A blog post on Art defines<sup>4</sup> graffiti as: “a creation of art that portrays people’s emotions, artistic expression, or politics in backdrops, characters, or creative words. Graffiti is a common type of street art that is mainly done on public walls on city streets – typically without any prior permission. Graffiti is commonly done as an act of rebellion, marking territory, making a statement, or raising awareness.” Thus, graffiti comprises of text as well as images applied on surfaces.

Graffiti and street art act as a medium of expression for communities. From being found on walls, made by some gangs<sup>5</sup>, street art has come a long way today. One of such art was Created by Shilo Shiv Suleman in Jaipur, in honour and love of the Queer community. Another artwork depicting the late singer Lata Mangeshkar, was found on the walls in Mumbai.

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<sup>1</sup>Merriam Webster Dictionary. <https://www.merriam-webster.com/dictionary/graffiti> last accessed on 07.07.2024 at 17:11.

<sup>2</sup> Celia Lerman, “Protecting Artistic Vandalism: Graffiti and Copyright Law” 2 NYU J. Intell. Prop. & Ent. L. 295 (2012-2013).

<sup>3</sup> Maric, Bojan. “The History of Street Art.” Widewalls, 2014, [www.widewalls.ch/magazine/the-history-of-street-art](http://www.widewalls.ch/magazine/the-history-of-street-art). Last accessed on 19.10.2023 at 22:54

<sup>4</sup> “Graffiti vs. Mural: What Are the Differences?” Eden Gallery, 2021, [www.eden-gallery.com/news/graffiti-vs-mural](http://www.eden-gallery.com/news/graffiti-vs-mural) last accessed on 21.10 2023 at 11:28

<sup>5</sup> Carmen Cowick, *Preserving Street Art: Uncovering the Challenges and Obstacles*, 31 Journal of the Art Libraries Society of North America , 29–44 (2015), <https://www.jstor.org/stable/10.1086/680563>

Thus, it is not just threats, clues or mere texts anymore, but an arena of deep messages and appreciations on the walls.

Street paintings, sculptures, murals and graffiti are the forms of street art which are found all over the world. While the debate over whether these are illegal is rampant, they are none the less pieces of art as far as copyright laws are concerned. This paper is concerned about unsanctioned art made over the walls on a street and discusses copyrightability of the same.

When such a debated type of art intersects with the need to protect the rights of artists, the intersection with copyright comes into play. What copyright seeks to protect and how far is it practically possible to protect contemporary art forms has been explored further in this paper. To explore practical implications, first it is necessary to explore whether street art with all its forms falls into the scope of copyrightable subject matter. Assistance of various jurisdictions such as UK and USA have been taken to analyse copyrightable subject matter and to analyse whether illegal art can be protected.

## **STREET ART AS COPYRIGHTABLE SUBJECT MATTER**

The main idea behind the enactment of copyright laws was to protect the creative labour of authors.<sup>6</sup> The author can exploit his work in whichever way he wants it to as he has the exclusive right to do so. The author can also assign or license his work. After the ‘term of copyright’ expires, the work falls into public domain i.e., the public can use the work as per their whims and fancies. In Indian Jurisdiction, ‘original literary, dramatic, musical, and artistic’ works are protected whereas in derivative works, ‘cinematographic films and sound recordings’ are protected.<sup>7</sup> For copyright to subsist in a work, it should fall under the ambit of copyright, should be original and should also be fixated.

The copyright jurisprudence requires that the expression must be original, as was held in *Fiest Publication’s* case<sup>8</sup>. It makes no difference if the idea is not original. The expression should not be a copy of some other work, although it could be ‘inspired’ or ‘derived’ from it. Inspired and derivative work should have some elements that make such work different from the original and stops it from coming under the area of ‘copied work’. In *Bleistein V. Donaldson*

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<sup>6</sup> Kimani, Paul. “TOWARDS A COPYRIGHT LAW THAT ENCOURAGES CREATIVITY.” *The Law Review of the Franklin Pierce Center for IP*, vol. 63, no. 2, pp. 354–414, <https://law.unh.edu/sites/default/files/media/2023/03/kimani-2.pdf>.

<sup>7</sup> Indian Copyright Act (Act 14 of 1957), s. 13.

<sup>8</sup> *Feist Publications v. Rural Telephone Service Co.*, 499 US 340.

Lithographing Co.<sup>9</sup>, the Court emphasized on the personal expression of an artist rather than creative or artistic merits. In *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*<sup>10</sup>, Court observed that, “*The test is valid when the author is trying to create some additions or advancement in other artist's work instead of working on something original of his own. The Bleistein test can be satisfied even if the author was attempting to perfectly reproduce another work, rather than create an original work of his or her own. If the item exhibits a "distinguishable variation" from another work, the law presumes that such a variation bears the imprint of the author's person, thereby entitling the work to copyright protection. Even if the variation is accidental, the copier is still the origin of that variation.*”

Apart from being an ‘independent creation’, the work should also contain some amount of creativity. This stand was taken in *Fiest Publication’s* case by the US Supreme Court. The ‘sweat of the brow’ doctrine valued the fruits of labour, investment and skill of the author while the doctrine of “modicum of creativity” values the variation and creativity of the author. There is no expectation that the creativity should be high but even a minimum amount is sufficient to make the product stand out. This doctrine “sweat of the brow” was used in *Walter v. Lane*<sup>11</sup> and later in the case of *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd*<sup>12</sup> where the Court said that, “it is immaterial whether work is wise or foolish, accurate or inaccurate, or whether it has any literary merit.”<sup>13</sup> This doctrine was rejected by Indian courts and the concept of “flavour of minimum requirement of creativity” was introduced.

Copyright subsists in a work, the moment it is created. That is, unlike trademarks, patents or other Intellectual Properties, it doesn’t have to be registered. Although, one of the conditions to get copyright is that the work must be ‘fixated’. Fixation in copyright law means recording. The mode of fixation does not matter, only that it should be in a tangible medium. The Copyright Act, 1957 does not define fixation. For any material to qualify as work, it must be fixated. As Laura A. Heymann points out,

“Under U.S. copyright law, fixation is what creates both an author and a commodifiable subject, neither of which exists as a legal entity in copyright law before the act of fixation occurs. It transforms the creative process (and its subject) from a contextual, dynamic entity into an

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<sup>9</sup> 188 U.S. 239 (1903)

<sup>10</sup> 191 F.2d 99 (2d Cir. 1951)

<sup>11</sup> [1900] AC 539

<sup>12</sup> [1964] 1 WLR 273

<sup>13</sup> *Eastern Book Company v. D.B. Modak*, 2002 PTC 641

acontextual, static one, rendering the subject archived, searchable, and subject to further appropriation. Even in contexts in which there is no competing claim as to control, fixation still works to bound the fruits of creative effort, engendering distance between the author and audience. Fixation thus causes a kind of death in creativity even as it births new legal rights.<sup>14</sup> Fixation is what allows the subject to be commercialized and analysed; it is what marks the transformation to subject in the first place.”<sup>15</sup>

The interpretation clause of the Copyright Act, 1957 defines artistic work as,

““artistic work” means, —

- i. a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
- ii. a [work of architecture]; and
- iii. any other work of artistic craftsmanship;”<sup>16</sup>

Thus, to qualify as an artistic work, it should not necessarily possess any artistic quality; it can be devoid of any merit but shall still qualify as artistic work. This ambiguous language of legislation makes it difficult to decode as to what exactly is ‘artistic merit’. What might be pleasing, inspiring and creative to one eye might appear offensive, obscene and bland to one. Where any expression through art becomes obscene and goes against public morality, it gets hit by the reasonable restrictions imposed upon Freedom of Speech and expression under the Indian Constitution.<sup>17</sup>

As the inception of most of the legislations in India can be traced back to the legislations of the United Kingdom, it is necessary to refer the CDPA<sup>18</sup>, 1988. Section 4 of the Act reads,

“Artistic works.

(1) In this Part “artistic work” means—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or

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<sup>14</sup> Laura A. Heymann, “How to Write a Life: Some Thoughts on Fixation and the Copyright/Privacy Divide” 51 Wm. & Mary L. Rev 830 (2009).. <https://scholarship.law.wm.edu/wmlr/vol51/iss2/14>

<sup>15</sup> Ibid.

<sup>16</sup> Indian Copyright Act (Act 14 of 1957), s. 2(c)

<sup>17</sup> Article 19(2), The Constitution of India, 1950.

<sup>18</sup> Copyright, Designs and Patents Act, 1988.

(c) a work of artistic craftsmanship.

(2) In this Part—

- “building” includes any fixed structure, and a part of a building or fixed structure;
- “graphic work” includes—

(a) any painting, drawing, diagram, map, chart or plan, and

(b) any engraving, etching, lithograph, woodcut or similar work;

- “photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;
- “sculpture” includes a cast or model made for purposes of sculpture.”

The language of the section is quite inclusive and street art, in whichever form, falls under the copyrightable subject matter. Some of these arts are created within a matter of time while some takes days to complete. This span of time required to complete does not in anyway change the copyrightability of the Art.<sup>19</sup> Even the typical ways in which an artist signs his name on the walls<sup>20</sup> is copyrightable subject matter.<sup>21</sup> Reliance can be placed on *IPC Magazines Ltd v MGN Ltd*<sup>22</sup> wherein, the way in which the claimant styled the word Woman in white on a red background was arguably copyrightable.

Usually known as tags or throw ups in the graffiti community, if they are taken as typefaces then they are indeed exempted from copyright infringement under Section 54 and 55 of the CDPA as “an artistic work consisting of the design of a typeface”.<sup>23</sup> The copyright laws protect works containing high level of creativity as well as works which, for a certain class of people may appear to be rubbish. Overruling the de minimis rule<sup>24</sup>, trivial subject matter such as newspaper headlines are considered copyrightable<sup>25</sup>. Going by the same logic, it could pave a pathway for protection of tags and throw-up.

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<sup>19</sup> Bonadio Enrico, Street Art, Graffiti and Copyright: A UK Perspective, pg. 2. <https://doi.org/10.1017/9781108563581.011>

<sup>20</sup> Refer the way Banksy signs his name, for instance.

<sup>21</sup> Id at 17 at pg 5.

<sup>22</sup> *IPC Magazines Ltd v MGN Ltd [1998] FSR 431*

<sup>23</sup> Id at 18 at pg 163.

<sup>24</sup> The rule says that some works are too insignificant to attract infringement and even protection in the first place.

<sup>25</sup> *Newspapers Licensing Agency v Meltwater Holding [2010] EWHC 3099 (Ch) [72]*; *Newspapers Licensing Agency Ltd. v Meltwater Holding BV [2012] RPC 1 (CA)*

Graffiti is an illegal form of Art usually portrayed to rebel by miscreants, while Street art, moreover, is often purely artistic. Unlike spray-paint graffiti, street art is an aesthetic work that the general public is able to interpret and with which the public can connect.<sup>26</sup> Even if street art is made illegally, its scope of protection under copyright law does not diminish. This has been made apparent in *Creative Foundation v. Dreamland*<sup>27</sup> wherein it was held that illegally produced artworks should be protected.

As of the USA scenario, the *5pointz case*<sup>28</sup> plays an important role as it included graffiti artists and street artists under the VARA<sup>29</sup>. It is important to note at this stage that illegal graffiti was excluded from the purview of this Act as it is “hardly classifiable as fine arts”.<sup>30</sup> The US court in Hanrahan’s case<sup>31</sup> recognised a certain mural having stature in the society and for its destruction, damages were awarded to the plaintiff. The issue regarding illegal graffiti and copyright on the same was discussed, albeit tangentially, in *Villa v. Pearson Educ., Inc.*<sup>32</sup>. The artist had taken action against a publisher for publishing a picture of his work in its strategy guide for a videogame without the artist’s permission. It was taken as a defence that this cannot count as infringement as the art in the first place was made illegally. The court held that, “the claim that the work was not copyrightable due to its illicit origin would require investigating the circumstances under which the work was created”. The debate whether illegally created art could be protected has not been settled in the US jurisprudence, although in plethora of cases<sup>33</sup> it can be seen that the courts did not investigate into the legality of art created.

In India, most art form found on the streets are traditionally and culturally relative as against the tags and throw ups found in the west.<sup>34</sup> Copyright in typefaces or minimum arts is not that prevalent in India.<sup>35</sup> The Delhi High Court observed that, “in relation to the work of an author, subject to the work attaining the status of a modern national treasure, the right would include an action to protect the integrity of the work in relation to the cultural heritage of the nation”<sup>36</sup>.

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<sup>26</sup> [https://jipel.law.nyu.edu/vol-2-no-2-2-lerman/#\\_ftn1](https://jipel.law.nyu.edu/vol-2-no-2-2-lerman/#_ftn1) last accessed on 24.10.2023 at 21:21.

<sup>27</sup> *Creative Foundation v Dreamland & Others [2015] EWCH 2556 (Ch), 11 September 2015.*

<sup>28</sup> *Cohen et al. v G&M REALTY L.P. et al., Case No. 13-CV-05612(FB) (RLM*

<sup>29</sup> Visual Artists Rights Act, 1990

<sup>30</sup> *Botello v Shell Oil Co.* 280 Cal. Rptr. 535 (Ct. A 1991)

<sup>31</sup> *Hanrahan v Ramirez*, No. 2:97-CV-7470, 1998

<sup>32</sup> *Villa v Pearson Educ., Inc.*, 2003 WL 22922178 (N.D. Ill. Dec. 9, 2003)

<sup>33</sup> *Reece v Mark Ecko Unlimited*, 2011 U.S. Dist. Lexis 102199 (2011); *Mager v Brand New School*, 78 USPQ 2d 1389 (2004)

<sup>34</sup> Saikia Nandita, “Street Art, Graffiti, and Copyright Law: India”, Cambridge Core, pg. 272. <https://doi.org/10.1017/9781108563581.018>

<sup>35</sup> *Aananda Expanded Italic* (15.01.2002, Registrar of Copyrights, New Delhi, India) MANU/CP/0001/2002

<sup>36</sup> *Amarnath Sehgal v Union of India* (21.02.2005, Delhi High Court, India) MANU/DE/0216/2005.



This shows that unless a work attains the status of modern national treasure, its integrity from destruction cannot be saved. This creates a huge loophole as art works which do not qualify upto these standards could easily be destroyed and right of integrity couldn't be saved. Even legally created art is not protected against destruction.<sup>37</sup>

## **RIGHTS OF STREET ARTISTS: AN IP PERSPECTIVE**

While the statutory protection lies on one hand, on the other the practical application and the extent to which these provisions can be applied has to be balanced. Such practical hindrances are not only because of barriers in the form of practical application but also are due to factors on the part of artists.<sup>38</sup>

Contemporary art types such as particular makeup, sand art and so on have one problem that runs common with street art. The problem is that these artistic expressions are made for a fleeting time period. The subsequent problem is that, the existence is not permanent. And hence, it is very difficult to permanently fixate such art types. Conventional art such as paintings and drawings, once made remain on the material it was made and therefore can be said to be permanently fixated; the only way they can be destroyed is if someone physically disposes them off. When asked where is the art on which copyright subsists, one can easily show the conventional art types. If we consider sand art, then each time a wave of the ocean washes over, the art is destroyed. The only way to preserve it is to store it in electronic media like photographs or cinematographic films.

Now, the copyright subsists over these electronic media and not the art itself. The same is for street art. If anytime it is vandalised or washed over, the copyrighted art vanishes like it never existed. If the artist does not record it in any medium, then the art is lost forever. Courts have opined that even if an art piece is ephemeral in nature, "should in principle be protected as a three-dimensional work made by an artist's hand."<sup>39</sup> If the stance taken in *Infopaq's* decision<sup>40</sup> is to be taken into consideration, then one must not demarcate an intellectual creation as a particular type; it should be protected nevertheless. Thus, a discourse from permanent fixation can be adopted in the light of this decision.

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<sup>37</sup> *Raj Rewal v Union of India* (28.05.2019, Delhi High Court, India) CS(COMM) No.3/2018.

<sup>38</sup> Isabelle Brajer The problem of vandalism on contemporary outdoor murals and street art <https://doi.org/10.4000/ceroart.5761>

<sup>39</sup> *Metix (UK) Ltd v G.H. Maughan (Plastics)*, [1997] FSR 718

<sup>40</sup> *Infopaq v. Danske*, C-5/08

Another problem that has been persisting is that, such art is not made in protected spaces. It is made in open spaces where anyone, as per their whims and fancies, can paint over the already existing material.<sup>41</sup> If the artist uses such materials that are of degrading quality, then natural factors such as rain can easily wash off the art; people could also water it down and it will come off. If it is made on a building or any sort of construction, it could be taken down along with the construction itself. Artists have had to repair their art countless times over the years and it seems to be a non-feasible and tedious option of maintenance. Taking on a rather stern tone, Adrian Wilson who is an artist himself says that, if one cannot deal with the harsh truth of their street art being destroyed, they should move on to indoor or canvas work.

The removal and preservation of street art give rise to a significant controversy, primarily centred on the conflicting rights of artists for self-expression and property owners for control over their properties. Street art, commonly viewed as a manifestation of public art, mirrors the cultural and social identity of a community.<sup>42</sup> Advocates of the same contend that the removal of street art suppresses artistic expression and eliminates crucial voices from public spaces. Conversely, property owners assert their rights to manage and uphold their property, contending that street art encroaches upon their ownership and may contribute to vandalism.

For a person who is blind to the beauty of art, specifically street art, anything made on his property will be nothing but defacement. The sine qua non of artistic works is not the aesthetic merit that comes with the art.<sup>43</sup> The practice and procedure manual on artist works makes it clear that, “Any work which is an original creation of an author or an owner fixed in a tangible form, is capable of being entered into the Register of Copyrights, irrespective of the fact that whether such work possess any artistic quality or not”.<sup>44</sup> The problem arises when the person cannot comprehend the art and therefore thinks it to be too insignificant to be protected. Therefore, the debate between whether property rights of owners’ triumph over expression rights of artists has been birthed.

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<sup>41</sup> Sarah Cascone, “Cleaning Vandalised Street Art”, , April 21, 2021 last accessed on 29.01.2024 at 20:03. <https://news.artnet.com/art-world/cleaning-vandalized-street-art-1960146#:~:text=%E2%80%9CThe%20main%20problem%20with%20preserving,the%20artist%20Rock%20Block%20Block>.

<sup>42</sup> Gonçalves, K. and Milani, T. M. (2022) ‘Street art/art in the street – semiotics, politics, economy’, *Social Semiotics*, 32(4), pp. 425–443. doi: 10.1080/10350330.2022.2114724

<sup>43</sup> Thomas Kulka, On the Relative Unimportance of Aesthetic Value in Evaluating Visual Arts, *British Journal of Aesthetics* Vol. 62 pp. 63–79 (2022) <https://doi.org/10.1093/aesthj/ayab027>

<sup>44</sup> Practice and Procedure Manual: Artistic Work, 2018, pg. 2

## **COPYRIGHT CHALLENGES AND COPYRIGHT ENFORCEMENT IN STREET ART**

A painting made on a canvas by a painter should get the same protection as that of a painting made on walls. The only difference is that the one who paints on canvases would eventually be termed as artist and would get economic benefits out of it, while the one who paints on walls would never be able to protect his work. This mostly happens because street artists are not that well educated or have very less capital to hire IP team.<sup>45</sup> Such art made on walls, is exploited by people with deep pockets and the artists do not have the resources to assert their copyright and monopoly over it. Some ways of infringement of copyright in street art may be summarized as follows:

1. Compilation of photographs of street art in a book without taking permission; or
2. Taking photographs of street art without taking permission<sup>46</sup>; or
3. Printing street art/ graffiti on T-shirts without permission from artists; or
4. Featuring art in cinematograph films and videos without permission; and
5. Removing the art from the streets and bringing it indoors.

The major challenge in enforcement of rights is the difficulty in protecting moral rights. Even though the statutory requirement of original Literary, Dramatic, Musical and Artistic is fulfilled, at times it is practically difficult to extend protection. This difficulty mostly arises due to the ephemeral nature of work which is sought to be protected.<sup>47</sup> Street Art is no alien to this hardship.

The copyright regime in India awards not just the negative right but also neighbouring rights. These are known as moral rights and they are further branched out as right of paternity and right of integrity. While paternity rights enable the public to trace back an art to the artist, right of integrity gives a right to take action against any destruction of the art and reputation of the artist. The ephemeral nature of Street Art makes it difficult to strictly grant integrity rights to the artist. As discussed above, street art is the most susceptible to vandalism and attack, maintaining integrity of the Art becomes next to impossible. Further, it is equally difficult to trace the perpetrator who defaces and destroys such piece of Art which reduces the scope to

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<sup>45</sup> Carmen Cowick, Preserving Street Art: Uncovering the Challenges and Obstacles, 31 Journal of the Art Libraries Society of North America, 29–44 (2015), <https://www.jstor.org/stable/10.1086/680563> at pg 41

<sup>46</sup> [https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/street-art-and-copyright-2020-09-09\\_en](https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/street-art-and-copyright-2020-09-09_en)

<sup>47</sup> Id at pg 42.

take any action. Therefore, even though street art might tick all the parameters of ‘artistic work’, due to its transient form granting every right from the bunch is backbreaking<sup>48</sup>.

One of the problems in India, when it comes to protecting the Art is the lack of hygiene practiced in the country.<sup>49</sup> Walls adorned with beautiful art have become tainted with spits, vomits and urine. To protect art from such literate illiterates is turning out to be a tough task. Even after installation of urinals and taking effective sanitary measures, people still manage to decorate walls with their unwanted excreta thereby, reducing the beauty of street art manifolds.<sup>50</sup> Where problems of excreta are not found, walls are painted red by betel leaf chewers.<sup>51</sup> In such scenario, street art finds it difficult to survive.

## **CONCLUSION & SUGGESTIONS**

“A liberal tolerance of a different point of view causes no damage. It means only a greater self-restraint. Diversity in expression of views whether in writings, painting or visual media encourages debate. A debate should never be shut out. ‘I am right’ does not necessarily imply ‘You are wrong’. Our culture breeds tolerance – both in thought and in actions.”<sup>52</sup>

Decades after the emergence of street art, litigants have now, in this century, knocked on the doors of court to obtain copyright protection for the same.<sup>53</sup> This case shall be a historic decision and the first of its kind on the copyrightability of street art albeit, the case is majorly concerned with fair dealing of the plaintiff’s mural by the defendant. It remains to see how the Court deals with these issues; the matter is still subjudice.

It is effectively established that street art as artistic work fits into the definition provided by the legislations of UK, USA and India. While the first two are progressed nations, the courts there have recognised street art as art and has taken efforts to protect it; they have made efforts to protect the same even where the artists are unknown. But in the later nation, a problem still persists as the public and the courts fail to appreciate street art as one of the most creative and

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<sup>48</sup> AFB X JAAC DISCUSSIONS: CHACKAL ON STREET ART, <https://aestheticsforbirds.com/2016/11/17/afb-x-jaac-discussions-chackal-on-street-art/>

<sup>49</sup> TM Krishna What the pandemic has revealed about the arts in India, <https://indianexpress.com/article/opinion/columns/india-covid-19-pandemic-arts-7710489/> updated Jan 7, 2022.

<sup>50</sup> Ibid.

<sup>51</sup> Id at 34.

<sup>52</sup> Justice Sanjay Kishan Kaul, *Maqbool Fida Husain v. Raj Kumar Pandey* [3] [2008 CriLJ 4107]

<sup>53</sup> *St Art India Foundation & Anr. vs Acko General Insurance on 10 November, 2023*

ephemeral forms of art. The artist pours his thoughts and paints them on the wall. The picturesque result is a sight to behold!

Thus, it can be concluded that in Indian jurisprudence, statutory limitations are not the result of lack of protection to street art rather it is lack of awareness, appreciation and the sheer will of the citizens to protect pieces of art. The uneducated or the literate illiterates of the society are the biggest menace to the preservation of art in India. Beautified walls do not stay the same for long periods of time; in other nations artists fear that other artists may draw over their pieces while in India artists fear that someone might excrete over their piece. Even after the progress in the country, there remains a section of people which turns a blind eye towards the retention of beauty of the country.

It is as simple as it gets for the artist: they must append “©” to their art. When such matter shall reach the courts, the judges should take a liberal approach and include the contemporary pieces of art under the umbrella of copyrightable subject matter.

As part of suggestions, the following measures may be considered:

1. State-based organization may be set up to up an initiative to prepare a detailed directory comprising of photographs of various street art and graffiti found around the various cities of such state with details of corresponding artists. Copyright protection to be sought, commercial exploitation allowed, and royalty shared with such artists.

Such organisation would operate under the control of the state government and directories specific to each state can be created. However, in case artists are not found or known, then copyright of such art can rest with the organisation which would be exploited to benefit the street art community.

Thus, if any third party wishes to exploit the art included in the directory, they can easily contact the artists and proceed further with the formalities. If the artist is unknown, then royalty can be accepted by the organisation and same can be utilised for the benefit of street artists statewide.

2. Various conventions and symposiums can be organised wherein such artists would be invited to exhibit their art live, and simultaneously information about their earlier works could be catalogued. Further, incentives could be offered to the artists to enhance their interest in participating in such conventions and showcase their skills.